INDEX.

ABATEMENT.

1. When the party seeking a divorce appeals from a judgment denying it, and pending the appeal either party dies, the appeal and the action abate absolutely. *Downer* v. *Howard*, 667.

2. But where the judgment *grants* a divorce, or determines either way an issue as to the *validity* of a marriage, the appeal may be revived for the purpose of protecting persons whose property interests were affected by the judgment. *Id.*

ACCOMPLICE. See CRIMINAL LAW, 2–4; WITNESS.

ACTION. See ARBITRATION, 3; DEBTOR AND CREDITOR, 11; DECEIT, 1; INFANT, 1; JURISDICTION, 1–2; MALICIOUS PROSECUTION, 1–3; STATUTE, 2; STREET; SUNDAY.

1. The mere fact that the breach of a public statutory duty has caused damage does not vest a right of action in the person suffering the damage against the person guilty of the breach; whether the breach does or does not give such right of action must depend upon the object and language of the particular statute. *Atkinson* v. *Newcastle and Gateshead Waterworks Co.*, 59.

2. When a plaintiff's cause of action arises from a violation of law on his part, his suit cannot be sustained. *Smith* v. *Rollins*, 129.

3. The violation of a duty imposed by a municipal ordinance, and sanctioned by a fine, will not support an action on the case for special damages in favor of one injured by the violation and against the violator. *Heeney* v. *Sprague*, 129.

4. The plaintiff contracted with the defendants to play first old man and character business for thirty-six weeks. At the close of the nineteenth week, the defendants discharged the plaintiff without fault on his part, who commenced an action for breach of the contract during the next week. *Held*, that the action was not premature. *Sutherland* v. *Wyer*, 335.

5. Actions brought on executory contracts before the time of fulfilment discussed. *Note to Berry* v. *Carter*, 490.

6. A cause of action founded upon an *implied* contract may be the subject of set-off. *Fanson* v. *Linsley*, 733.

7. Whenever one person commits a tort against the estate of another with the intention of benefiting his own estate, the law will imply a contract on the part of the wrongdoer to pay to the party injured the full value of all benefits resulting to such wrongdoer. But where one person commits a tort against another, and his own estate is not thereby benefited, the law will not imply or presume a contract on the part of such wrongdoer to pay for the resulting damages. *Id.* See ASSUMPSIT, 5.

8. As a general rule an action on a contract must be brought in the name of the party having the legal interest therein. *Kountz* v. *Holthouse*, 734.

9. A third party may maintain an action in his own name upon a contract made expressly for his benefit, where his release would be a sufficient discharge to the promisor, but not where it would leave the promisor liable to an action by the other contracting party. *Id.*

10. The rule that if one party pay money to another for the use of a third

ACTION.
person, an action lies by the person beneficially interested, does not apply where the contract is for the benefit of the contracting party, and the third person is a stranger in the contract and consideration; the action then must be by the promisee. *Guthrie* v. *Kerr*, 734.
11. Where the contract leaves the promisor subject to a suit by the promisee, and likewise to a third person beneficially interested, the latter cannot maintain an action. *Id.*
12. A legatee cannot maintain a common law proceeding against the debtor of his testator's estate. *Id.*

ACTS OF CONGRESS.

1780, May 26.	See FOREIGN JUDGMENT, 2.
1834, June 30.	See OFFICE.
1836, July 4.	See PATENT.
1862, June 2.	See UNITED STATES.
1862, July 17.	See CONFISCATION.
1864, June —	See TAXATION.
1866, April 9.	See HUSBAND AND WIFE, 10.
1874, Revised Statutes.	
Sect. 639.	See REMOVAL OF CAUSES.
Sect. 905.	See FOREIGN JUDGMENT, 1.
Sect. 1005.	See UNITED STATES COURTS.
Sect. 1079.	See WITNESS.
Sect. 5440.	See CRIMINAL LAW, 29.
1875, March 3.	See REMOVAL OF CAUSES.

ADMINISTRATOR. See EXECUTOR.

ADMIRALTY. See SHIPPING.
I. *Collision.*
1. Vessels in motion are required to keep out of the way of a vessel at anchor. *Steam-tug Ehrman*, 400.
2. A ship and a bark were both on the port tack. The bark was the windward vessel, and had the wind three points free. The ship was close hauled, and when first sighted by the bark was approaching her on her lee beam. *Held*, that the ships were crossing each other, and that it was the duty of the bark, being the windward vessel, to get out of the way of the other. *The Peckforton Castle*, 594.

II. *Liability of Ship Owners.* See *infra*, 10; SHIPPING.
3. Both a tug and its tow are liable for the consequences of a collision, when those in charge of the respective vessels jointly participate in their control, and the master or crew of both vessels are guilty of negligence in their navigation. *Steam-tug Virginia Ehrman*, 400.
4. Ship-owners, if their ship is without fault, are entitled in a cause of collision, except where it occurs from inevitable accident, to full compensation for the damage their ship receives, provided it does not exceed the value of the offending vessel and her freight then pending. *Id.*

III. *Maritime Lien.*
5. A contract for the use of a wharf by the master of a vessel is a maritime contract, and as such cognizable in admiralty. *Ex parte Easton*, 423.
6. Such a contract, if the vessel is a foreign one, or belongs to a port of another state, gives rise to a maritime lien against the vessel, enforceable by a proceeding *in rem* or by a suit *in personam* against the owner. *Id.*
7. Nature of maritime lien discussed. *Id.*, *Note.*
8. While there is no doubt of the jurisdiction of the Supreme Court to issue a writ of prohibition to the District Court, when proceeding as a court of admiralty and maritime jurisdiction, yet the facts upon which the court is to act must appear in the record. *Id.*

IV. *Salvage.*
9. A steam-tug, having a vessel in tow, saw a ship ashore and went out of her way to inform, and informed, another steam-tug of what she had seen.

ADMIRALTY.

The other steam-tug thereupon proceeded to the stranded ship and towed her into safety. In an action of salvage instituted on behalf of both steam-tugs against the ship, *held*, that the owners, master and crews of both steam-tugs were entitled to salvage remuneration. *The Sarah*, 792.

10. Ship-owners are not liable for life salvage in cases where no property belonging to them has been saved. *Cargo ex Sarpedon*, 792.

AGENT. See BROKER, 1; COMMON CARRIER, 10; EVIDENCE, 5; OFFICER, 2.

1. A general power to borrow money includes authority to give to the lender the ordinary securities for the sum borrowed. *Hatch* v. *Coddington*, 60.

2. Persons who deal with an agent before notice of the recall of his powers are not affected by the recall. *Id.*

3. No company can be allowed to hold out another as its agent and then disavow responsibility for his acts. After it has appointed an agent in a particular business, parties dealing with him on that business have a right to rely upon the continuance of his authority, until in some way informed of its revocation. *Southern Life Ins. Co.* v. *McCain*, 401.

4. An agreement for the purchase of realty was made between E. of the first part, and D., "in behalf of the city of Providence," of the second part. It was signed by the parties in their own names and sealed with their own seals. On demurrer, *Held*, that the contract was that of D. personally, and not that of the city. *City of Providence* v. *Miller*, 130.

5. An agent authorized to sell goods on commission has no implied power to barter or exchange them, or to pledge them for his own debt. *Wheeler & Wilson Manufacturing Co.* v. *Givan*, 272. See TROVER, 2.

6. In suit upon a note given for the purchase-money of a sewing-machine bought of plaintiff's agent, it is no defence that the maker has furnished board to the agent in payment of the note under an agreement made at the time of the sale, where it appears that the maker had notice that the agent was not authorized to make such agreement and the plaintiff never consented to it. *Id.*

7. A person intrusted with merchandise simply as an agent, for the sale thereof, cannot dispose of it by *barter* to one who knows the goods bartered for to be for the agent's own use. *Victor Sewing Machine Co.* v. *Heller*, 734.

8. Mere possession of chattels by an agent cannot empower him to admit away the title of his principal. *Michigan Machine Co.* v. *Parcell*, 734.

9. A principal must disavow the acts of his agents within a reasonable time, otherwise he is held to have ratified it. *Union Gold Mining Co.* v. *Rocky Mountain National Bank*, 400.

10. Where a draft purported to be drawn in the name of the firm by D. *M.* Brock as their agent, and on the trial it appeared to have been drawn by D. *W.* Brock: *Held*, that the variance was immaterial. *McDonough* v. *Heyman*, 668.

11. Where an agent's authority to bind defendants by a draft is in question, it is proper, in connection with proof of his having previously drawn a similar draft to the same order, which had been paid, to ask the payee what the agent said to him at the time the first draft was drawn as to his authority to draw in defendants' names. This is admissible to show that in drawing both drafts the agent acted in the same capacity. *Id.*

12. If parties in whose names a draft is drawn appropriate and enjoy the fruits of the same, with full knowledge of the transaction, they thereby ratify the act of the person drawing it, though previously unauthorized. *Id.*

13. *It seems*, that if the agent of an express company receives goods consigned to him as such for delivery to the purchaser, and having in his hands for collection at the same time a bill for the price of such goods, delivers them to the purchaser, the company becomes liable to the consignor, whether the agent in fact collects the bill or not. *Wells* v. *American Express Co.*, 668.

14. Where goods are not delivered to an express company, but are sent by railway to their place of destination, consigned to the purchaser *in the care* of the express company's agent at that place, and never come into his possession, but are delivered by the railway company directly to the purchaser,

AGENT.
without fault of the express company or its agent, and a bill of such goods, sent also to such agent for collection, not being paid by the purchaser, is promptly returned by the agent, no liability of the express company to the consignor is created by these facts. *Id.*

ALIMONY. See HUSBAND AND WIFE, 5, 6.

ALLEY. See EASEMENT, 1; MUNICIPAL CORPORATION, 14, 15.

ANCIENT LIGHT. See EASEMENT, 2-4.

APPLICATION OF PAYMENTS.
1. Where a person owes another several distinct debts, he has the right to choose which debt he will pay first; and the creditor is bound to appropriate it as directed by the debtor. *Stewart* v. *Hopkins*, 594.
2. The creditor cannot divert a payment, so made by his debtor, from the appropriation made by him, upon mere equitable considerations that do not amount to an agreement, though mere equitable considerations may control where the payment is made without designating its application. *Id.*
3. To make applicable the rule that in the absence of a specific appropriation of payments by either the debtor or creditor, the law will appropriate them, there must be some testimony tending to show that no such appropriation has been made by the parties. *Albert* v. *Lindau*, 401.

ARBITRATION.
1. Where several persons enter into a written contract, stipulating that each shall keep up his own cattle, and prevent the same from trespassing upon the crops or hedges of any of the others, and that in case any injury should occur by reason of the cattle of any one of the said persons trespassing upon the crops or hedges of any of the others, and the parties themselves could not agree upon the amount of the damages sustained, then that the question as to the amount of such damages should be submitted to arbitrators, consisting of three of the signers to said contract; and that the decision of such arbitrators should be final between the parties: *Held*, that such contract is valid and binding. *Berry* v. *Carter*, 486.
2. Where one of the parties refuses to recognise the validity of such a contract, the other may immediately commence an action for the amount of such damages. *Id.*
3. Effect of agreement to arbitrate on right of action in the courts. *Id.*, *Note* 490.
4. Revocability of reference before award discussed. *Id.*, *Note* 491.

ASSAULT AND BATTERY. See CRIMINAL LAW, II.
Provocation of an assault, though not sufficient for justification, may go to exclude exemplary damages. *Brown* v. *Swineford*, 670.

ASSIGNMENT. See CONTRACT, 15, 16; DEBTOR AND CREDITOR, 1; INSURANCE, 18; TROVER, 1.
1. The assignment of a judgment or other like chose in action, where the legal title does not vest in the assignee, can only be perfected as against the debtor or his creditors by notice given to them that such assignment has been made. *Fickey* v. *Loney*, 50.
2. This rule does not apply where notes have been actually delivered. *Id.*
3. If the possession is not changed, and apparent ownership still with the assignor, so that he is enabled to hold himself out as owner of the paper, and if the debtor pay in good faith to the assignor thus in possession, he will be protected. *Id.*

ASSUMPSIT. See ACTION.
1. A plaintiff may recover as upon an implied *quantum meruit*, for the value of services rendered under a special contract, which has been wrongfully terminated by the defendant. *Ralston* v. *Administrator of Kohl*, 194.
2. Where an item of account on which suit is brought is not proved on the trial to the full extent claimed in the petition, but the variance between the allegations and the proof is not such as to mislead the defendant in regard to

ASSUMPSIT.
the nature and character of the claim in controversy, such variance will not prevent a recovery, if the facts proved show a good cause of action. *Id.*

3. In order to raise an implied contract to pay for labor, it is not necessary that there shall have been an intention on the part of the laborer during his service to charge therefor; it is sufficient that the one for whom the labor is done expected to pay for it. *Hay* v. *Walker*, 335.

4. In an action brought against a city by its mayor, to recover the costs taxed by him in his own favor in certain cases against persons charged with violating the ordinances of the city, in which cases such persons were fined, and in default of payment were sentenced to hard labor in the city prison, until such labor, at a stipulated rate, would amount to a sum equal to the fine and costs in such cases, and the persons were put to work in the city prison, and performed the required labor for the benefit of the city: *Held*, that this did not constitute a collection and appropriation by the city of the costs taxed in favor of the mayor in such cases, from which the law will imply a promise on the part of the city to pay the amount of such costs to the mayor. *Gibson* v. *City of Zanesville*, 531.

5. Assumpsit does not lie for the value of personal property taken by a trespasser and applied to his own use. The law implies no promise under such circumstances. *Tolan* v. *Hogeboom*, 734. See ACTION, 7.

ATTACHMENT. See BANKRUPTCY, 1, 2; CONFLICT OF LAWS, 1.

1. Where two several creditors simultaneously attach a debtor's real estate, consisting of an equity of redemption, as between themselves an undivided half thereof becomes holden as attached on each writ, and the equity may be sold in moieties upon executions recovered upon such writs, one undivided half upon each execution, where neither moiety is sold upon the execution for a sum exceeding the amount due thereon. *True* v. *Emery*, 156.

2. Where an officer in his return of a sale of an equity upon execution declares that he published in a certain newspaper the notice which the statute requires to be given, it is not competent for the debtor, or any one claiming under him, to contradict the officer's return by the production of such newspaper, showing the return to be untrue. *Id.*

3. Process of garnishment cannot be made to operate so as to annul the contracts of parties. *McPherson* v. *Atlantic and Pacific Railroad Co.*, 672.

4. A garnishee proceeding is discontinued by plaintiff's failure to appear on return of a summons to show cause. *Johnson* v. *Dexter*, 738.

5. A judgment against the garnishees upon their voluntary appearance to a second summons issued after such discontinuance, does not bar a recovery against them on a previous assignment from their creditor. *Id.*

ATTORNEY. See CHAMPERTY; CONTRACT, 7; ESTOPPEL, 2; WITNESS.

1. All communications which an attorney is precluded by statute from disclosing, his client cannot be compelled to disclose against his objection of privilege. *State* v. *White*, 131.

2. Communications made to an attorney in the course of a professional consultation, which do not relate to the subject-matter of the consultation, are not privileged. *State* v. *Mewhorter*, 531.

3. Where an attorney has received money which he is to hold until the question of its ownership shall be determined between the parties, he cannot in a proceeding of garnishment refuse to state where he has deposited the money, on the ground that his knowledge of the matter is privileged. *Williams Brothers* v. *Young*, 531.

4. The authority of an attorney who has obtained a judgment for his client continues in force until the judgment is satisfied. *White* v. *Johnson*, 335.

5. Payment to the attorney is payment to his client. *Id.*

6. Returning an execution to the creditor's attorney of record, at the latter's request, will protect the officer against a suit by the creditor for not returning it into the clerk's office. *Id.*

7. To constitute a revocation of the attorney's authority, notice must be given. The opposite party has a right to presume that his authority continues until notified to the contrary. *Id.*

ATTORNEY.

8. The substitution of one attorney for another in a cause is not complete until notice of his substitution has been served upon the attorney of the opposite party. *Comfort* v. *Stockbridge*, 402.

9. An attorney who refuses to pay over money belonging to his client will be ordered to do so on motion of the client. *Orr* v. *Tanner*, 759.

10. Control of courts over their attorneys to enforce the payment to clients of money collected for them, discussed. *Id., Note* 760.

BAIL. See SURETY, 8.

BAILMENT. See NEGLIGENCE.

1. On the deposit of articles in the cloak-room at a railway station, a charge was made of 2*d.* for each, and the depositor received a ticket, on the back of which there was a notice that the company would not be responsible for any package exceeding 10*l.* in value. A placard upon which was printed, in legible characters, the same condition, was also hung up in the cloak-room. The plaintiff deposited his bag, of value exceeding 10*l.*, in the defendant's cloak-room, paid 2*d.*, and received a ticket. The bag was lost or stolen. In an action to recover its value, *Held*, that plaintiff was under no obligation to read the condition. *Parker* v. *The Southeastern Railway Co.*, 60.

2. Property bailed to be manufactured comes within the class *locatio operis faciendi*. *Arnott* v. *Kansas Pacific Railway Co.*, 471.

3. The question of bailment is determined by the fact of whether the identical article delivered to a manufacturer is to be returned. *Laflin & Rand Powder Co.* v. *Burkhardt*, 532.

4. Possession is of the essence of a pledge, both at common and civil law. *Casey* v. *Cavaroc*, 532.

5. The pledgor may have the temporary possession of the pledge, as special bailee, without defeating the legal possession of the pledgee; but where the thing pledged has never been out of the pledgor's actual possession, but has always been subject to his disposal, no pledge or privilege exists as to third persons. *Id.*

BANK AND BANKER. See CHECK, 2; SAVINGS BANK.

A suspension of specie payments by a bank is a failure of such bank. *Godfrey* v. *Terry*, 793.

BANKRUPTCY. See HUSBAND AND WIFE, 26, 27.

I. *Effect of Proceedings.*

1. An attachment of the property of a debtor on mesne process is *ipso facto* dissolved by a deed of assignment made in bankruptcy, if the proceedings in bankruptcy were commenced within four months after such attachment. *McCord* v. *McNeal*, 52.

2. In such a case the assignee's right is superior to the right of the attaching creditor, although the attached property had been sold before the commencement of the bankruptcy proceedings, and the proceeds paid over to the creditor after the adjudication, but prior to the date of the deed of assignment. *Id.*

3. Effect of the Bankrupt Act on state insolvent laws discussed. *Note to Burrill* v. *Hevner*, 372.

II. *Preferences.*

4. It is not enough that a creditor has some cause to suspect the insolvency of his debtor, but he must have such a knowledge of facts as to induce a reasonable belief of his debtor's insolvency, in order to invalidate a security taken for his debt. *Grant* v. *National Bank*, 793.

III. *Assignee.* See TRADEMARK, 5.

5. An assignee in bankruptcy may sue in a state court to collect the assets. *McHenry* v. *La Société Francais*, 60.

6. If an assignee in bankruptcy submits himself to the jurisdiction of a state court, in a suit affecting the estate which was pending when the proceedings in bankruptcy were commenced, he is bound by any judgment that may be rendered. *Id.*

BANKRUPTCY.

7. The assignee is not required to take measures for the sale of mortgaged property unless its value is greater than the encumbrance. His duties relate chiefly to unsecured creditors, and he need not trouble himself about encumbered property unless something may be realized out of it on their account. *Id.*

IV. *Discharge.*

8. A discharge in bankruptcy when pleaded in bar to an action for prior indebtedness, cannot be impeached in a state court, notwithstanding the bankrupt purposely omitted the indebtedness sued upon from the schedules, and omitted giving the creditor notice of the pendency of the proceedings. *Brown* v. *Kroh*, 669.

BILL OF EXCEPTIONS. See TRIAL.

1. There is but one mode of bringing upon the record the rulings of a judge, and that is by a bill of exceptions allowed and sealed or signed by the judge. *Phœnix Ins. Co.* v. *Lanier*, 61.

2. The judge's notes do not constitute a bill of exceptions. They are but memoranda from which a formal bill may afterwards be drawn up and sealed. *Id.*

3. A bill of exceptions can be settled and allowed only by the judge, and when it receives his signature it should be complete and nothing left to be settled by the agreement, recollection or judgment of counsel, clerk or other person. *Atchison & Nebraska Railroad Co.* v. *Wagner*, 180.

4. When skeleton bill allowed. *Id.*

5. A party excepting must point out specifically the part or proposition of the charge excepted to. *P., Ft. W. & C Railway* v. *Probst*, 195.

6. An exception in gross to the refusal to charge on a series of propositions will not be sustained when any of the propositions are unsound. *Id.*

7. In criminal as in civil cases, the bill of exceptions must be made up and signed at the term at which the trial takes place. *Eason* v. *State*, 313.

BILL OF LADING. See SHIPPING.

BILL OF REVIEW. See PLEADING, 1.

BILLS AND NOTES. See AGENT, 6, 11-13; ASSIGNMENT, 2, 3; CHECK; CORPORATION, 19; EQUITY, 9, 10; EVIDENCE, 5, 6; GUARANTY, 2, 3; HUSBAND AND WIFE, 35; JUDGMENT, 10; PARTNERSHIP; TENDER.

I. *Form, consideration, etc.*

1. A note given for the discontinuance of a criminal prosecution is void. A note is equally void, whether given as partial or exclusive consideration, for the discontinuance by the prosecuting attorney of criminal proceedings. *Wisner* v. *Bordwell*, 669.

2. The Act of Ohio making it a penal offence to take a "promissory note or other negotiable instrument," not containing the words "given for a patent right," knowing the consideration thereof to be a patented invention, does not include in such offence the taking of notes not negotiable. *State* v. *Brower*, 196.

II. *Rights of parties.* See *infra*, III.

3. If a party take a negotiable bill or note before maturity for consideration and without *mala fides*, such party acquires a good title, notwithstanding there may have been negligence. Nothing less than proof of *knowledge* of facts that show the want of authority on the part of the person transferring the note will be sufficient for that purpose. *Citizens' National Bank* v. *Hooper*, 532.

4. The plaintiff is not bound to make inquiry, and mere negligence, however gross, not amounting to wilful and fraudulent blindness, while it would be *evidence of mala fides*, is not the same thing. *Id.*

5. On a suit by the holder of a bill of exchange against the drawer, who is also the endorser, no recovery can be had without proof of presentment to the drawee. *Thayer* v. *Peck*, 336.

6. Where a note, payable to order and unendorsed, is accidentally destroyed

BILLS AND NOTES.

by fire while in the possession of the payee, the payee can maintain an action on such lost instrument without first giving a bond of indemnity. *Welles* v. *Wade*, 735.

7. In an action by the endorsee against the endorser of a promissory note, which was not presented to the maker for payment at maturity, the burden is upon the plaintiff to show that the maker had then removed from the state, or that due diligence was used to find him or ascertain his place of residence. *Eaton* v. *McMahon*, 131.

III. *Endorsement, Acceptance, etc.*

8. An acceptance by a partner in his own name of a bill of exchange drawn upon the firm, binds the firm. *Tolman* v. *Hanrahan*, 735.

9. A party cannot recover in his own name on an unendorsed note payable to order by showing a verbal assignment from the payee to himself. *Robinson* v. *Wilkinson*, 669.

10. Where a promissory note made payable to a particular person or order is first endorsed by a third person, such third person is held to be an original promisor, guarantor or endorser, according to the nature of the transaction and the understanding of the parties at the time the transaction took place. *Good* v. *Martin*, 3.

11. If he put his name in blank on the back of the note at the time it was made, and before it was endorsed by the payee, to give the maker credit with the payee, or if he participated in the consideration of the note, he must be considered as a joint maker of the note. *Id.*

12. If his endorsement was subsequent to the making of the note and to the delivery of the same to take effect, and he put his name there at the request of the maker, pursuant to a contract of the maker with the payee for further indulgence or forbearance, he can only be held as guarantor, and he is not liable without legal proof of consideration for the promise, unless it be shown that he was connected with the inception of the note. *Id.*

13. If the note was intended for discount, and he put his name on the back with the understanding of all the parties that his endorsement would be inoperative until the instrument was endorsed by the payee, he is liable only as a second endorser in the commercial sense, and as such is entitled to the privileges which belong to such an endorser. *Id.*

14. A person so signing cannot in any case be a first endorser. He may be a second endorser, but in the absence of any statement by him at the time he is presumed to have signed as a joint maker or guarantor, according as he signs at the making of the note or afterwards, and as he participates or not in the original consideration. *Id.*

15. Parol evidence is admissible to show the circumstances under which he signed, as they bear upon the foregoing rules. *Id.*

16. The endorser cannot show a parol agreement that the same should be without recourse. *Eaton* v. *McMahon*, 131.

17. Parol evidence is not admissible to vary the contract implied from endorsement as to change a simple unqualified endorsement into an endorsement without recourse. *Doolittle* v. *Ferry*, 735.

18. The names of the payees appeared on the back of a note in the usual position of the first endorser, about three inches from the left end, and that of the defendant in the opposite direction, about the same distance from the right end of the note, so that the latter with reference to the former may be said to have been inverted. *Held*, that this irregular endorsement did not relieve the defendant of liability, as he could have recourse against the payees. *Arnot's Adm'r* v. *Symonds*, 735.

BOND. See SURETY, 3.

1. To justify the reformation of a bond assigned to a *bona fide* holder, for a valuable consideration, it must be proved that the assignee had notice of the error at the time of the assignment. *Foster* v. *Kingsley*, 336.

2. Generally the term bond implies an instrument under seal. *Inhabitants of Boothbay* v. *Giles*, 793.

BOND.

3. The official bond required of a collector of taxes must be a sealed instrument. *Id.*

BOUNDARY. See POSSESSION, 3, 4.

1. A settlement acquiesced in, becomes binding, though not in fact correct. *Smith* v. *McKay*, 402.

2. Metes and bounds in the description of premises control distances and quantities when there is any inconsistency between them. *Morrow* v. *Whitney*, 336.

3. In determining disputed boundaries, original monuments will govern. If none such can be found at the lot in dispute, more distant monuments may be consulted, from which a survey may be made. *Nys* v. *Biemeret*, 735.

4. If no certain monuments can be found, long-continued occupancy and acquiescence, and even reputation and hearsay as to boundaries, may have weight. *Id.*

BROKER.

1. A broker has the right to retain out of the proceeds of a cargo sold by him for an agent, brokerage due him by the agent for the sale of other cargoes not belonging to the same principal. *Barry* v. *Boninger*, 336.

2. Where a broker, employed to sell property at a price satisfactory to his principal, produces a party ready to make the purchase at a satisfactory price, the latter cannot relieve himself from liability to the broker for a commission by a capricious refusal to consummate the sale. *Delaplaine* v. *Turnley*, 370.

CASES AFFIRMED, COMMENTED ON, OVERRULED, ETC.

Burns *v.* The State, 48 Ala. 195, overruled. *Green* v. *The State*, 468.

Corby *v.* Hill, 4 C. B. N. S. 556, approved. *White* v. *France*, 66.

Indermaur *v.* Dames, Law Rep. 1 C. P. 274 and 2 C. P. 311, approved. *White* v. *France*, 66.

Insurance Co. *v.* Newton, 22 Wall. 32, followed. *Ins. Co.* v. *Higginbotham*, 358.

Loughran *v.* Ross, 45 N. Y. 792, disapproved. *Kerr* v. *Kingsbury*, 638.

Merritt v. Judd, 14 Cal. 59, disapproved. *Kerr* v. *Kingsbury*, 638.

Railroad Co. *v.* Cary, 28 Ohio St. 208, re-affirmed. *Railway Co.* v. *Stringer*, 764.

Thurtell *v.* Beaumont, 8 J. B. Moore 612, 1 Bing. 339, disapproved. *Kane* v. *Ins. Co.* 293.

Watson *v.* Jones, 13 Wall. 679, reviewed and dissented from. *Perry* v. *Wheeler*, 24.

CAVEAT EMPTOR. See JUDICIAL SALE, 3.

CHAMPERTY.

1. A contract between attorney and client that if anything is recovered the attorney is to receive one half the amount obtained, after deducting expenses, is void for champerty. *Orr* v. *Tanner*, 759.

2. In Missouri champertous contracts are void; but a contract between attorney and client is not champertous because the attorney agrees to receive, as a compensation for his services, a portion of the property in controversy. It is an essential element in a champertous contract, that he also agree to pay some portion of the cost or expenses of the litigation. *Duke* v. *Harper*, 595.

3. A contract to pay a specific sum of money to a lawyer for his services in a suit concerning real estate out of the proceeds of said land when sold by the client, if recovered, is not champerty. *McPherson* v. *Cox*, 544.

4. Nor is it void under the Statute of Frauds because not in writing, for it may be performed within the year. *Id.*

CHARITY.

1. A bequest to one in trust "for any and all benevolent purposes which he may see fit" is void for uncertainty. *Adge* v. *Smith*, 132.

2. The statute of 43 Eliz., chap. 4, was never in force in Maryland. *Ould* v. *Washington Hospital for Foundlings*, 196.

CHARITY.

3. The validity of charitable endowments and the jurisdiction of courts of equity in such cases, however, in this country do not depend upon that statute. *Ould* v. *Washington Hospital for Foundlings*, 196.

4. A charitable use may be applied to almost anything that tends to promote the well-being of social man. *Id.*

5. A perpetuity is a limitation of property which renders it inalienable beyond the period allowed by law. *Id.*

6. A devise to a corporation to be created by the legislature is good as an executory devise. *Id.*

7. A misnomer of a corporation legatee will not defeat a bequest if such legatee can be identified. *Goodell* v. *Union Association*, 533.

8. A gift to "Trinity Church Sunday School in Mount Holly, $1000 to be safely invested, the interest to be applied to making Christmas presents to the scholars of said school," is not a legal charity, and is void, also, for uncertainty in not designating the kind of gifts, and because such distribution is indiscriminate and devoid of all purpose. *Id.*

CHARTER. See CONSTITUTIONAL LAW, 6–8, 11, 13; CORPORATION, 13, 16, 25; RAILROAD, 6.

CHARTER-PARTY. See SHIPPING.

CHATTEL MORTGAGE. See MORTGAGE, I.

CHECK. See DONATIO CAUSA MORTIS; GIFT.

1. The rightful possession of a check, made payable to the order of a particular person, confers no authority on the drawee to pay the same to the person having such possession, without the genuine endorsement of the payee. *Dodge* v. *National Exchange Bank*, 196.

2. The duty of the drawee, upon acceptance of such check, to pay the same only upon the genuine endorsement of the payee named therein, is not affected by a custom among bankers as to the mode of ascertaining the identity of the person endorsing the name of the payee and receiving payment. *Id.*

3. Delay to present a bank check until the failure of the bank, ten days after its receipt, *held* negligence which would have discharged the drawers if they had left funds in the bank until that time to meet the check. *Kinyon* v. *Stanton*, 669.

4. But where the drawers drew out their entire account in the bank before its failure, they are liable to protect the check. *Id.*

CHOSE IN ACTION. See ASSIGNMENT, 1; CORPORATION, 17; INSURANCE, 17.

CHURCH. See COURTS, 1–4.

COLLISION. See ADMIRALTY; SHIPPING, 4.

COMMON CARRIER. See BAILMENT, 1. NEGLIGENCE.

1. The contract of a carrier of passengers, implied from the purchase of a ticket, is to carry the purchaser safely as to his person and ordinary baggage. *Weeks* v. *N. Y., N. H. & Hartford Railroad Co.*, 506.

2. For injuries to his person or loss of his property of the foregoing kind, by the negligence of the carrier, the latter is responsible in damages, although the injury or loss occurred by the violence of third persons, not under the carrier's control. *Id.*

3. But where the passenger carries on his person property not included in the class mentioned, and which, from its value, could not be expected to form part of ordinary travelling baggage, the carrier is not liable for its loss, even by forcible robbery allowed to take place by the carrier's negligence. *Id.*

4. In a suit against a railroad company for damages resulting from delay in the transit of freight, the company can show that the delay was caused solely by the lawless, irresistible violence of men who were not in the employment of the railroad company. *Pittsburgh, Ft. Wayne & Chicago Railroad Co.* v. *Hazen*, 273

COMMON CARRIER.

5. The liability of a carrier commences when the goods are delivered to, and accepted by, him or his authorized agent for transportation. *Pratt* v. *Grand Trunk Railway Co.*, 231.

6. If a common carrier agrees that property intended for transportation by him may be deposited at a particular place, without express notice to him, such deposit amounts to notice and is a delivery. *Id.*

7. The liability of the carrier is fixed by accepting the property to be transported, and the acceptance is complete whenever the property thus comes into his possession with his assent. *Id.*

8. If the deposit of goods is a mere accessory to the carriage, that is, if they are deposited for the purpose of being carried, without further orders, the responsibility of the carrier begins from the time they are received; but when they are subject to the further order of the owner, the case is otherwise. *Id.*

9. The plaintiff's intestate delivered to the defendant's agent at Castine $24.90, to be forwarded to Belfast, and there delivered to one Beale, agent of the Continental Life Insurance Company. The money was sent for the purpose of paying the intestate's semi-annual premium on his life-policy, which would by its terms lapse if premium was not paid on or before eight days thereafter; of all which the defendant's agent had notice, but failed to deliver the money. *Held*, that primarily the defendants would be liable in damages for the net value of the policy on the day it lapsed, both parties having presumably contemplated such damages from knowledge of the circumstances. *Grindle* v. *Eastern Express Co.*, 337.

10. Where the consignor of goods shipped by an express company instructs the company not to permit the consignee to examine the goods before delivery and payment of charges, the agent of the company is authorized to refuse such examination and incurs no personal liability by returning the goods to the consignor. *Wiltse* v. *Barnes*, 533.

11. If the express company has a rule forbidding inspection of goods by the consignee before delivery, it must appear that the rule was brought to the knowledge of the shipper to be binding upon the consignee. *Id.*

12. The carrier may limit its obligation to carry safely over its own lines, or only to points reached by its own carriages, and for safe storage and delivery to the next carrier in the route beyond, although the goods are marked to a point beyond its line. *Erie Railroad Co.* v. *Wilcox*, 273.

13. A railroad company may, by express contract, limit its liability in the carriage of horses. *Morrison* v. *Phillips Colby Construction Co.*, 670.

14. Possession by a shipper of a carrier's receipt for the property, containing special terms, is at least *prima facie* evidence of his assent to them, and in most cases may be conclusive. *Id.*

15. Defendant's custom was to carry horses at the owner's risk, and at reduced rates for that reason; and the letters "O. R.," signifying "Owner's Risk," were upon the receipt given plaintiff for his horses, and retained and put in evidence by him; and he testifies that he "did not see" those letters, but not that he did not *understand* their meaning. *Held*, that the restricted liability of the company clearly appears from plaintiff's evidence. *Id.*

CONFISCATION.

The general pardon and amnesty by President Johnson, by proclamation of December 25th 1868, do not entitle one receiving their benefits to the proceeds of his property, previously condemned and sold under the Confiscation Act of 1862, after such proceeds have been paid into the treasury of the United States. *Knote* v. *United States*, 273.

CONFLICT OF LAWS. See HUSBAND AND WIFE, 14; SET-OFF; WILL, 9.

The plaintiff, a citizen of Rhode Island, attached in Connecticut a debt due from a resident of Connecticut, to a corporation located in Pennsylvania. Previous to the attachment the corporation had gone into insolvency under the insolvent laws of that state, and had under those laws made an assignment of all its effects to a trustee for the benefit of its creditors, and notice of the assignment had been given to the Connecticut debtor. *Held*, that the trustee

CONFLICT OF LAWS.
in insolvency did not acquire a title to the debt that was good against the attachment. *Paine* v. *Lester*, 132.

CONSPIRACY. See CRIMINAL LAW, III.

CONSTITUTIONAL LAW. See TAXATION, 1-3.

I. *Powers of Congress.* See CRIMINAL LAW, 24.

1. The power vested in Congress to establish "post-offices and post-roads" embraces the regulation of the entire postal system of the country. *Matter of Jackson*, 596.

2. Letters and sealed packages subject to letter postage in the mail can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. *Id.*

3. Regulations against the transportation in the mail of printed matter, cannot be enforced so as to interfere with the freedom of the press. When, therefore, printed matter is excluded from the mail, its transportation in any other way cannot be forbidden by Congress. *Id.*

II. *Powers of the State Legislature.* See CORPORATION, 11, 12; HUSBAND AND WIFE, 8–10; STATUTE, 9–11.

4. The "township aid act" of Missouri authorized subscriptions by townships to the capital stock of railroad companies whenever two-thirds of the qualified voters of the township, voting at an election called for that purpose, should vote in favor of the subscription. The constitution of the state prohibited such a subscription "unless two-thirds of the qualified voters of the * * * town, at a regular or special election to be held therein, shall assent thereto." *Held*, that the *assent* required by the constitution was obtained if two-thirds of those voting at the prescribed election should vote to that effect; and that the said "township aid act" was constitutional. *County of Cass* v. *Johnson*, 61.

5. All qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. *Id.*

6. A statute of a state which declares that all charters of corporations granted after its passage may be amended or repealed by the legislature, does not necessarily apply to supplements to a charter already passed, though the supplement be subsequent to the statute. *State* v. *Yard*, 132.

7. Nor does a provision in a supplement to the charter, which says that "*this supplement, and the charter to which it is a supplement*, may be altered or amended by the legislature," apply to a contract with the company made in a supplement passed long after. *Id.*

8. Such reservations of the right to repeal found in statutes, are only binding on succeeding legislatures so far as they choose to adopt them. It is, therefore, in every case a question whether the legislature making the contract intended that the former provision for repeal or amendment should become a part of the new contract by implication. *Id.*

9. In modes of proceeding to enforce a contract the legislature has the control and may enlarge, limit or alter them, provided that it does not deny a remedy or so embarrass it with conditions as seriously to impair the value of the right. *State of Tennessee ex. rel. Bloomstein* v. *Sneed*, 337.

10. The constitution of Alabama declared that corporations "shall not be created by special act." An act of said state was passed authorizing the W. V. Railroad Company (a pre-existing corporation) to purchase the railroad and franchises of the Alabama Railroad Company (another pre-existing corporation), and, after doing so, to change its own name to that of the Alabama and Chattanooga Railroad Company: *Held*, that this act was not unconstitutional, and that the above provision in the constitution could not be construed to prohibit the legislature from changing the name of a corporation, or from giving it power to purchase additional property. *Wallace* v. *Loomis*, 402.

11. The original charter of a company gave it the right, in consideration

CONSTITUTIONAL LAW.

of building a turnpike authorized thereby, and of keeping it in repair, to erect certain toll-gates, and to exact certain tolls for the use of the turnpike, until the expiration of twenty-five years from the date of the charter, and as much longer as the state should fail to redeem the franchises so granted by paying the cost of the work: *Held*, that this was undoubtedly a contract; but it related only to the turnpike then authorized to be constructed. *St. Clair County Turnpike Co.* v. *The People*, 472.

12. The regulation of the forms of administering justice by the courts is an incident of sovereignty. The surrender of this power is never to be presumed. *Cairo and Fulton Railroad Co.* v. *Hecht*, 197.

13. A statute, therefore, which prescribes a mode of service of judicial process upon a railroad company, different from that provided for in its charter, is valid. *Id.*

14. When, however, it clearly appears to be the intention of the legislature to limit its power of bringing the corporation before its judicial tribunals to the mode mentioned in the charter, subsequent legislation upon that subject is invalid. *Id.*

15. The police power of a state cannot be exercised over a subject confided exclusively to Congress by the federal constitution. *Hannibal and St. Joseph Railroad Co.* v. *Husen*, 164.

16. While a state may enact sanitary and quarantine laws, it cannot interfere with transportation into or through its borders, beyond what is absolutely necessary for its self-protection. *Id.*

17. A statute of a state which prohibits driving or conveying any Texas, Mexican, or Indian cattle into the state between the first day of March and the first day of December in each year, is unconstitutional. *Id.*

18. The sale, by retail, of intoxicating liquors may be constitutionally regulated by law, and in localities where the legislature is of the opinion that the peace of society so requires, license to carry on the retail traffic may be refused. *Anderson* v. *Commonwealth*, 533.

19. The question of license is one properly of local police, and may be regulated by lawfully constituted local agencies representing and acting for the local public. *Id.*

III. *Taking private property. Eminent Domain.* See DAMAGES, 1; TAXATION.

20. When the ratification of an assessment of damages of the landowner vests in the city a right, at its will, to enter upon the land and possess it as a street, such a right constitutes a taking, within the sense of the constitutional provision forbidding the taking of private property for public use without compensation. *Fink* v. *Mayor of Newark*, 670.

21. When land is so taken, provision must be made for the payment of such damages within a reasonable time. *Id.*

IV. *Powers of Judiciary.* See *supra*, 12, 13.

22. When a law has been passed and approved and certified in due form, the courts cannot go behind the law to inquire into the observance of form in its passage. *Kilgore* v. *Magee*, 736. See STATUTE, 12.

V. *Trial by Jury; Putting twice in jeopardy, etc.*

23. Art. 7 of the amendments to the Constitution of the United States, relating to trials by jury, applies only to the courts of the United States. *Pearson* v. *Yewdall*, 197.

24. An award of punitive damages for a tort which is also punishable as a crime, is not in violation of the constitutional provision that no person for the same offence shall be twice put in jeopardy of punishment. *Brown* v. *Swineford*, 670.

CONTEMPT.

1. The adjudication of contempt by a court of competent jurisdiction, where the proceeding is according to the common law practice, is final and cannot be reviewed by a court of error. *Tyler* v. *Hamersley*, 242.

2. But where the question of contempt is tried upon an issue of law tendered by the party moving in the proceeding. the decision must be regarded as a judgment upon which a writ of error may be brought. *Id.*

CONTRACT. See ACTION, 4–11; ARBITRATION, 1; CONSTITUTIONAL LAW, 8, 9, 11; CORPORATION, 24; FRAUDS, STATUTE OF, 1–4, 6; MORTGAGE, 4, 5; SALE.

1. Verbal agreements between the parties to a written contract are in general inadmissible to vary its terms or to affect its construction. But oral agreements subsequently made on a new and valuable consideration and before the breach of the contract, in cases not falling within the Statute of Frauds, stand upon a different footing, as such agreements may have the effect to enlarge the time of performance, or may vary any other of its terms, or may waive or discharge it altogether. *Hawkins* v. *United States*, 62.

2. Implied promises exist only when there is no express promise between the parties. *Id.*

3. When a contract for the delivery of stone exists only in parol, a subsequent verbal agreement varying the manner of delivery is binding. *Walker* v. *Johnson*, 537.

4. The plaintiff, a sculptor, made a plaster bust of the deceased husband of the defendant, under an agreement that she was not to be bound to take it unless she was satisfied with it. When it was finished she refused to accept it: *Held*, that the plaintiff was not entitled to recover. As the bust was to be satisfactory to the defendant, it was for her alone to determine whether it was so, and it was not enough that her dissatisfaction was unreasonable. *Zaleski* v. *Clark*, 133.

5. Where a party to a contract by his acts or default renders the performance of the contract impossible, the other party to the contract may treat the same as rescinded. *Seipel* v. *International Life Ins. and Trust Co.*, 197. See *infra*, 11.

6. Courts will always refuse to enforce contracts contrary to public policy, however in actions upon them, that fact may be made to appear. *Wight* v. *Rindskopf*, 274.

7. A contract between A., an attorney, and B., a party indicted for several offences, that B. should furnish certain evidence in other cases and should then, through the influence of A. with the prosecuting attorney, be permitted to plead guilty to the count involving the least penalty, and thereupon B. should pay A. a large sum: *Held*, void. *Id.*

8. A sale of intoxicating liquors, made while the prohibiting law was in force, is not a lawful consideration for a promise subsequent to the repeal of the act. *Ludlow* v. *Hardy*, 737.

9. Whether one promise be the consideration for another, or whether the performance and not the mere promise be the consideration, is to be determined by the intention and meaning of the parties, as collected from the instrument and the application of good sense and reason to each particular case. *Jones* v. *United States*, 500.

10. Where an act is to be performed by the plaintiff before the accruing of the defendant's liability under his contract, the plaintiff must prove either his performance of such condition precedent or an offer to perform it which the defendant rejected, or his readiness to fulfil the condition until the defendant discharged him from so doing or prevented the execution of the matter which the contract required him to perform. *Id.*

11. No man can be obliged to perform an impossibility, but where the contract is to do a thing which is possible in itself, the performance is not excused by the occurrence of an inevitable accident or other contingency, although it was not foreseen by the party nor was within his control. *Id.*

12. A contract whereby certain parties agree to deliver all the lumber they have to two persons, is assignable by one of the latter to his associate. *Hart* v. *Summers*, 671.

13. An averment of a sale of any lumber to third parties is an averment of a breach, and there was no need to set forth the precise terms of payment by usage, an averment of readiness at all times to comply with the contract being sufficient. *Id.*

14. On such a contract a special count lies for selling lumber not so far set apart as to pass title to plaintiff, and also for such as had already been passed, while the common counts lie for the latter. *Id.*

CONTRACT.

15. An executory contract for personal services cannot be assigned by the employer unless the employee assents. *Chapin* v. *Longworth*, 671.

16. In an action by the employee against the employer and his assignee, the allegation that subsequent to the agreement of the employer to assign the employee rendered the same service for the assignee during part of the time embraced by the contract, and received compensation from him at the rate therein specified, does not show such substitution. *Id.*

CONTRACTOR. See NEGLIGENCE, 1.

CONVERSION. See WILL, 4.

CONVEYANCE. See VOLUNTARY CONVEYANCE.

CORPORATION. See CONSTITUTIONAL LAW, 6, 7, 8, 10–13; EQUITY, 20; MANDAMUS, 1; MUNICIPAL CORPORATION; SHERIFF, 2.

1. There is a material difference between such an artificial creation as a corporation and a natural person. The latter can do anything not forbidden by law. The former can do only what is authorized by its charter. Where several corporations, existing by virtue of separate charters, are consolidated by a new charter, the old corporations cease to exist, and the new one commences its existence with only such powers as its own charter gives it. *Shields* v. *State of Ohio*, 133.

2. In case a corporation on request refuses or neglects to bring suit against a defaulting officer, such suit may be brought by a stockholder himself. *Hazard* v. *Durant*, 134.

3. A corporation cannot release the fraud of a defrauding officer, except by a unanimous vote of its stockholders. *Id.*

4. The legislation of the state making provision for the service of process, a foreign corporation, transacting business there, may be estopped by such legislation from pleading that the corporation is not an inhabitant, or is not found in the state for service of process. *Williams* v. *Empire Transportation Co*, 698.

5. A foreign corporation is liable to be sued in New Jersey on a contract made in that state, when summoned in accordance with its laws. *National Condensed Milk Co.* v. *Brandenburgh*, 671.

6. If the contract sued on was made in New Jersey the court will not inquire whether, in truth, the contract was made by the corporation. Such an inquiry must be reserved for the trial of the cause. *Id.*

7. A corporation created by concurrent legislation of two states has a legal domicile in each state. *Bridge Co.* v. *Mayer*, 672.

8. In regard to the jurisdiction of the federal courts, a corporation is a citizen of the state by which it was created. *Erie Railway Co.* v. *Stringer*, 763.

9. A foreign railroad corporation does not become an Ohio corporation or a citizen of Ohio by merely leasing, possessing and operating in that state the property of an Ohio railroad company. *Id.*

10. Independently of statutes, it is the duty of a private corporation to keep its principal place of business, its records and the residence of its officers so located as to render it accessible to the process and the visitorial power of the state by which it is created. *State* v. *Railway Co.*, 672.

11. While it is clear that proceedings by *scire facias*, or otherwise, against a corporation for the forfeiture of its charter, cannot be maintained, except by the authority of the legislature, a special Act of Assembly for this purpose is not required. *State* v. *Consolidation Coal Co.*, 338.

12. It is competent for the legislature by a general law to authorize suits for this purpose to be instituted at the instance of private parties or to confer the power upon the governor to cause the proceeding to be instituted in his discretion, whenever he may consider the public interests so require. *Id.*

13. Where in the original charter of a railroad company the legislature expressly reserved the power to alter, repeal or annul the charter, the question whether a proposed amendment of the charter is consistent with the public interests and with the prosperity of the company, is one which by the charter is made to depend upon the discretion of the legislature, and is not to be determined by the courts. *Coal Co.* v. *Coal Co.*, 338.

CORPORATION.

14. The courts are bound to regard a company incorporated according to all the required forms of law, as a corporation so far as third parties are concerned, until it is dissolved by a judicial proceeding in behalf of the government that created it. *Powder Co.* v. *Sinsheimer*, 404.

15. Where the name of an individual appears on the stock-book of a corporation as a stockholder, the *prima facie* presumption is that he is the owner of the stock. *Turnball* v. *Payson*, 197.

16. The charter of a corporation providing that "no stockholder in said corporation shall have the right to transfer his shares therein, without first giving ten days' notice in writing of such intention, and ten days' refusal thereof to said corporation, at the lowest price at which he will sell to any other person; and if in such case said corporation elect to purchase said shares at said lowest price, such stockholder shall, on the price being offered to him, convey said shares to said corporation." A stockholder offered to the corporation a certain number of shares at a gross price, and subsequently sold to a third party a smaller number of shares at a given price per share. *Held*, that the offer to the corporation did not comply with the provisions of the charter, and that the corporation could not be compelled to allow the transfer of the stock sold upon its books. *Sweetland* v. *Quidnick Co.*, 197.

17. The stock of a corporation may be held by a valid title without a certificate. The right to the stock is in the nature of a non-negotiable chose in action. *Dewing* v. *Perdicaries*, 472.

18. The assignee takes it subject to all the equities which existed against it in the hands of the assignor. *Id.*

19. Even a negotiable note which is void *ab initio* can no more be enforced against the maker by a *bona fide* holder than by the payee. *Id.*

20. Contracts of subscription to the stock of a corporation, if procured by fraud, will be set aside. *Vreeland* v. *New Jersey Stone Co.*, 534.

21. An oral contract of subscription will not be enforced under a charter requiring that such contracts shall be made in writing. *Id.*

22. Where a fraud is committed in the name of a corporation, by persons having the right to speak for it, for their personal benefit, they will be made to answer personally for the injury inflicted by their fraud. *Id.*

23. In a suit by a corporation, a plea of general issue admits the competency of the plaintiff to sue as such. *Pullman* v. *Upton*, 596.

24. An assignee of corporate stock who has caused it to be transferred to himself on the books of the company, and holds it as collateral security for a debt due from his assignor, is liable for unpaid balances thereon to the company or to the creditors of the company, after it has become bankrupt. *Id.*

25. It cannot be shown, in defence to a suit of a corporation, that the charter was obtained by fraud; neither can it be shown that the charter has been forfeited by misuser or nonuser. Advantage can only be taken of such forfeiture by process on behalf of the state. *County of Macon* v. *Shores*, 403.

26. In a suit on a bond issued by a county, the objection that the corporation was not organized within the time limited by the charter is unavailing. *Id.*

27. Where a corporation has power under any circumstances to issue such securities, the *bona fide* taker has a right to presume they were issued under circumstances which gave the requisite authority. *Id.* See MUNICIPAL BONDS, 6.

28. Although there may be a defect of power in a corporation to make a contract, yet if a contract made by it is not in violation of its charter, and the corporation has by its promise induced a party relying on the promise to expend money and perform his part thereof, the corporation is liable on the contract. *Hitchcock* v. *City of Galveston*, 596.

29. A sale by the assignee of an insolvent corporation is not invalidated by the fraud of a stockholder committed without the knowledge of the assignee. *Trevitt* v. *Converse*, 534.

30. The personal liability of the officers and stockholders of a corporation for a debt contracted by the corporation can arise only out of some statutory provision. *Salt Lake City National Bank* v. *Hendrickson*, 671.

COSTS. See MALICIOUS PROSECUTION, 4.

COUNTY. See CORPORATION, 26; MUNICIPAL BONDS.

COURT OF CLAIMS. See CONFISCATION.

Jurisdiction is not conferred upon the Court of Claims to allow mere extra allowances in a case where there is no promise to that effect, either express or implied. Power to determine claims founded upon any law of Congress or upon any regulation of an executive department, or upon any contract express or implied with the government of the United States, and all claims which may be referred to it by either house of Congress, is vested in the Court of Claims. Mere applications for extra allowance unsupported by any contract must be made to Congress. *Hawkins* v. *United States*, 62.

COURTS. See CONTEMPT; CORPORATION, 13, 14; ERRORS AND APPEALS, 1–3; HUSBAND AND WIFE, 4–5; REMOVAL OF CAUSES; UNITED STATES COURTS, 3.

1. Civil courts cannot re-judge the judgment of an ecclesiastical tribunal in matters within the latter's jurisdiction; but the decision of such tribunal upon its own jurisdiction over the subject-matter is not exclusive. The control of the civil courts over the civil rights of the citizens cannot be ousted. *Perry* v. *Wheeler*, 24.

2. A board of reference under canon 4 of the Protestant Episcopal Church is an ecclesiastical court, and the civil courts may inquire into its organization and decide whether it has acted within the scope of its constitutional authority. *Id.*

3. The word "permanently," as used in the call of a rector, means indefinitely, and constitutes a contract that he should continue to hold the office of rector till one or the other of the parties desires to terminate the relation, and then to be terminated after reasonable notice and with the approval of the ecclesiastical authority of the diocese. *Id.*

4. Certain canons of the Episcopal Church construed. *Id.*

5. The decisions of the state courts upon the rights of parties under state laws are final and binding upon the federal courts, and a decision of the latter, which is in opposition to the construction of state laws given by the highest court of the state, will not be regarded by the state courts. *Id.*

6. *Watson* v. *Jones*, 13 Wall. 679, reviewed and dissented from. *Id.*

COVENANT. See EQUITY, 6.

1. Where in an action on a covenant of seisin the defendant admits the covenant and alleges seisin in himself at the date of the deed, it devolves upon him to prove the seisin, and if he fails, the plaintiff will recover. *Cockrell* v. *Proctor*, 339.

2. The existence of a paramount title, whether asserted or not, is a breach of the covenant of seisin, whether it be express, or be implied by the words, "grant, bargain and sell." *Id.*

3. If a grantee fails to take possession of unoccupied premises conveyed by his deed, or having taken possession abandons them, he can recover of his grantor nominal damages only for breach of his covenant of seisin, unless there was a hostile assertion of a paramount title. *Id.*

4. Where land is conveyed to a minor, with provision reserving the whole of said premises for use as a homestead for his mother, himself and sister, until he arrive at the age of 21 years, or until his mother's death within that period, he takes an interest and present right capable of being so disturbed and infringed as to give him an immediate right of action and of suing alone, upon a remote grantor's covenant of quiet enjoyment. *Mason* v. *Kellogg*, 404.

5. Where land is sold with a covenant against encumbrances, and an encumbrance exists of a permanent character, which impairs the value of the premises, the damages will be measured by the diminished value of the premises. *Mitchell* v. *Stanley*, 275.

6. If a question arises whether a covenant be joint or several with respect to the covenantees, regard must be had to the interests of the covenantees in the covenant. But this rule has no application to the construction of a covenant, with respect to the obligation of the covenantors. *Boyd* v. *Kienzle*, 405.

CRIMINAL LAW. See BILL OF EXCEPTIONS, 7; BILLS AND NOTES, 1, 2; EVIDENCE, 15.

1. *Generally.*

1. Unless the prisoner was present during the progress of the trial, and at the rendition of the verdict, a judgment against him will be reversed. *State* v. *Able*, 274.

2. A detective who joins a criminal organization for the purpose of exposing it, and honestly carries out that design, is not an accessory before the fact, although he may have encouraged and counselled parties who were about to commit crime, if in so doing he intended that they should be discovered and punished. *Campbell* v. *Commonwealth*, 198.

3. It is competent for the Commonwealth to corroborate the testimony of an accomplice, as to occurrences subsequent to the crime, where they explain the relations, conduct and motive of the prisoners, although they do not connect them directly with the commission of the crime. *Carroll* v. *Commonwealth*, 198.

4. The admission of an accomplice as a witness for the government upon implied promise of pardon rests in the discretion of the court. *Wight* v. *Rindskopf*, 272.

5. An agreement of the public prosecutor, unsanctioned by the court, for immunity to several defendants, in several indictments, upon one of them becoming a witness for the prosecution upon still other indictments, would be a fraud upon the court. *Id.* See CONTRACT, 7.

6. Where objection is made to certain counsel aiding in the prosecution, on the ground that he is employed by the complaining witness and other private persons, it is error for the court to refuse to permit such employment to be shown, even though the prosecuting attorney states that the counsel acts in the cause at his request. *Sneed* v. *The People*, 473.

7. The statute simplifying the forms of informations does not dispense with the necessity of setting forth, in cases of statutory offences, allegations conforming to the statutes that define them. *Id.*

8 But where the offence is an ordinary common law one, an information in the language of the statute is sufficient. Under our system, entitling the accused to a previous examination, he can always ascertain fully the facts to be brought against him. *Id.*

9. Where a statute specifically defines what acts shall constitute a misdemeanor, it is sufficient in the indictment to bring the defendant within the statutory description of the crime. *State* v. *Halstead*, 134.

10. The violation of a prescribed public duty by a ministerial officer is indictable, without being made so in terms by statute. *State* v. *Startup*, 134.

11. In the absence of express words in the statute making the act criminal, the indictment must charge that the offence was committed with an evil intent or wilfully. *Id.*

12. An indictment for an offence created by statute must describe the offence in the words of the statute, and if the statute creating the offence contains in its enacting clause exceptions, it is necessary to negative such exceptions in the indictment. *Connor* v. *Commonwealth*, 535.

13. An omission to set out words charged as obscene in an indictment is no ground for a motion to quash. *Queen* v. *Bradlaugh*, 198.

14. A juror is competent who has formed an opinion from what he has read, but does not think the opinion is so fixed that he would not be governed by the evidence. *Curley* v. *Commonwealth*, 198.

15. In a homicide case, where the jury has been sworn on the last day of the term, the court may adjourn from day to day, and proceed with the trial of the case after the expiration of the term. *Carroll* v. *Commonwealth*, 198.

16. To show motive for crime, it is competent for the Commonwealth to prove the existence of a secret criminal organization, and to show that one division of such organization furnished men to commit murder in compensation for a like crime by members of another division. *Id.*

17. Where homicide is admitted, and the defence of insanity is set up, the burden of establishing the defence by a preponderance of testimony, rests upon defendant. *Bergen* v. *State*, 535.

CRIMINAL LAW.

18. The uncontrollable propensity which will relieve a person from the consequences of a crime, must have its origin alone in a diseased or insane mind. *State* v. *Mewhorter*, 535.

19. Drunkenness is no excuse for crime, but can negative the intent, and therefore it may show that the crime could not have been committed. *People* v. *Walker*, 473.

20. In a trial for homicide it was shown that the deceased was terribly beaten and left insensible by his assailants. He was carried to a house near by, and on the following morning started to his home, about a mile distant, unaccompanied and on foot. About midway to his home he was met by an acquaintance, whom he accosted, saying, "Bill, it is all up with me; I will never get over it;" and then went on to speak of his wounds and how they were inflicted, and from the effects of which he died two days thereafter. *Held*, that this evidence was properly received as dying declarations. *Kehoe* v. *Commonwealth*, 737.

21. Where one has been convicted of an infamous crime, but not sentenced, and motions in arrest of judgment and for a new trial are pending, he is not a competent witness for another who was jointly indicted for the same offence and granted a separate trial. *Id.*

22. Where several parties are jointly indicted and separate trials granted, one who has not yet been tried is not a competent witness for either of the others on trial. *Id.*

23. An act which is not an offence at the time it is committed cannot become such by any subsequent independent act of the party. *United States* v. *Fox*, 597.

24. It is competent for Congress to enforce by suitable penalties all legislation necessary or proper to the execution of powers with which it is intrusted; and any act committed with a view of evading such legislation or fraudulently securing its benefit, may be made an offence against the United States. But it is otherwise when an act committed in a state has no relation to the execution of a power of Congress or to any matter within the jurisdiction of the United States. An act having no such relation is one in respect to which the state can alone legislate. *Id.*

25. MICROSCOPICAL EXAMINATION OF BLOOD IN RELATION TO CRIMINAL TRIALS, 554.

26. POST-MORTEM IMBIBITION OF POISONS IN ITS MEDICO-LEGAL RELATIONS, 145.

II. *Assault and Battery.*

27. The right of an assailed party to self-defence does not depend on his believing or not believing at the moment that a call would bring some one else to interfere in his behalf. Except in special cases, no private person is bound in law, even if called on, to defend others. *The People* v. *Lilly*, 405.

III. *Conspiracy.*

28. A combination between one member of a partnership and a third person to issue and put in circulation the notes of the firm, for the purpose of paying his individual debts, the intention of the combination being fraudulent, is an indictable conspiracy. *State* v. *Cole*, 134.

29. An indictment founded upon section 5440 of the Revised Statutes, alleging generally a conspiracy to defraud the United States, is insufficient. *United States* v. *Crafton*, 127.

30. A conspiracy to defraud the United States cannot exist in contemplation of said section 5440, where the contemplated fraud depends upon the passage of a future Act of Congress to make it effective. *Id.*

IV. *False Pretence.*

31. An untrue assertion by a person who is endeavoring to procure goods on credit, that he is not trading with and is not indebted to any other person, is a sufficient false pretence to support an indictment. *Smith* v. *State*, 525.

CRIMINAL LAW.

V. *Larceny.*

32. The wrongful taking and carrying away of the property of another, for the purpose of obtaining a reward for its return, is larceny. *Berry* v. *State*, 472.

33. At common law there could be no larceny of a fixture if severed and carried away by one continuous act; but the modern authorities apply this rule only to things issuing out of, or growing upon the land; not to personal chattels that are constructively annexed thereto, as *e. g.* chandeliers screwed into pipes fastened to the ceiling of a house. *Smith* v. *Commonwealth*, 597.

34. An indictment charging the defendant with having feloniously stolen "bank bills, a more particular description of which cannot now be given," of a certain value specified, and the property of a person named, is sufficient on motion to quash. *Hart* v. *State*, 63.

35. A conviction upon evidence describing the property simply as "bills" is erroneous. *Id.*

VI. *Manslaughter and Murder.*

36. Where several parties unite to make an assault, which results in homicide, the acts and declarations of the defendant immediately prior to the assault, what was said in his presence by those acting in concert with him, and what occurred after the attack, are competent evidence. *Kehoe* v. *Commonwealth*, 737.

37. Mere *approval* by a bystander of a murder committed in his presence does not make him an accomplice. *State* v. *Cox*, 274.

38. If one person intentionally inflicts upon another a wound calculated to destroy life, and death ensues therefrom within a year and a day, the offence is murder or manslaughter, as the case may be; and he is none the less responsible for the result, although it may appear that the deceased might have recovered if he had taken proper care of himself, or that unskilful or improper treatment aggravated the wound and contributed to his death. *State* v. *Bantley*, 446.

VII. *Perjury.*

39. Where a charge of perjury is based upon testimony given in reference to a past transaction, evidence that the accused was "greatly intoxicated" at the time such transaction occurred, is a circumstance proper to be submitted to the consideration of the jury in determining whether the accused knowingly testified falsely. *Lytle* v. *State*, 535.

VIII. *Rape.*

40. The prisoner professed to give medical and surgical advice for money. The prosecutrix, a girl of nineteen, consulted him with respect to illness from which she was suffering. He advised that a surgical operation should be performed, and, under pretence of performing it, had carnal connection with the prosecutrix: *Held*, that he was guilty of rape. *Qveen* v. *Flattery*, 198.

CURTESY. See HUSBAND AND WIFE, II.

CUSTOM. See CHECK, 2; MINES, 5.

DAMAGES. See COMMOM CARRIER, 9; CONSTITUTIONAL LAW, 24; COVENANT, 3, 5; LIBEL, 5; MALICIOUS PROSECUTION, 2; MASTER AND SERVANT, 12, 13; TELEGRAPH, 1–3; VERDICT, 1.

1. In a proceeding to condemn a right of way for a railroad through a tract of land, the jury should assess the compensation due the owner for the land to be appropriated irrespective of benefits. *Railway Co.* v. *Longworth*, 199.

2. Mental anguish is a proper element of compensatory damages, and the outrage and indignity which have accompanied an injury are to be estimated even in cases where exemplary damages do not lie. *McKinley* v. *Railroad Co.*, 69

3. Timber was cut from lands of B by trespassers, who, by their labor,

DAMAGES.

increased its value threefold. It was then sold to an innocent purchaser, who was sued by B. : *Held*, that B. cannot recover the value of the timber as enhanced by the labor of the wrongdoers, after it was severed from the realty. *Lake Shore & Michigan Southern Railway Co.* v. *Hutchins*, 576.

4. Damages are assessable as of the date of the suit. *Brewster* v. *Sussex Railroad Co.*, 597.

5. In an action for injury to the plaintiff's land and buildings, by removal of lateral support through mining operations by the defendant on his own land, it was found that, in addition to existing damage, there would be future damage to the extent of 150*l*. *Held*, that such damage was recoverable in the action. *Lamb* v. *Walker*, 793.

DEBTOR AND CREDITOR. See APPLICATION OF PAYMENTS, 1–3 ; ASSIGNMENT ; ATTACHMENT, 1 ; HUSBAND AND WIFE, 23–30 ; SURETY ; TROVER.

1. If the intent of the assignment of a contract be to defraud the creditors of the assignor, the assignee can take nothing thereby, and is not entitled, as against the creditors, to the amount he may have paid. *Chapman* v. *Ransom*, 64.

2. Where after the filing of an opinion in the Supreme Court, affirming a judgment of the court below, the judgment debtor conveyed a large amount of real estate to his son and grandchildren, in consideration of love and affection, and a small nominal consideration expressed, it was *held* that such conveyance was fraudulent. *Potter* v. *Phillips*, 64.

3. A fraudulent grantor is not a necessary party to an action against his grantees to set aside a conveyance alleged to be in fraud of his creditors. *Id.*

4. Whatever remedy may be had in the bankrupt courts, preferences to creditors are allowed by the state laws. *Jordan* v. *White*, 405.

5. The fact that delay and hindrance to creditors were caused and intended by a debtor's transfer of his property, would avoid it even though for value, if the purchaser was not a creditor, but otherwise if he was. *Id.*

6. A wife, the same as other creditors, may obtain preferences from her husband as to debts due her. *Id.*

7. An assignee of a mortgage takes it subject to all defences in favor of the mortgagor, but free from latent equities existing in favor of third persons. *De Witt* v. *Van Sickle*, 537.

8. A mortgage executed as a step in a scheme to defraud creditors, will be upheld, even against creditors, in the hands of a *bona fide* assignee for value. *Id.*

9. Property conveyed in fraud of creditors will be reclaimed for the benefit of creditors, if reclamation can be effected without injustice to innocent third persons. *Id.*

10. He who buys any part of the avails of a scheme to defraud creditors, in order to keep what he gets, must not only pay for it, but he must be innocent of any purpose to further the fraud. *Id.*

11. Where a debtor voluntarily gives a security for a debt from which he is discharged by a deed of composition, such security may be enforced. *Crossley* v. *Moore*, 668.

12. But any agreement with one creditor for an advantage to him over other creditors, made to induce him to join in the composition, is utterly void, and is incapable of being enforced or confirmed even as against the assenting debtor. A security given in pursuance of such a bargain or a subsequent promise of payment, is equally void with the antecedent agreement ; and money paid by the debtor under such an agreement, in excess of the due proportion of such creditor's debt, may be recovered back. *Id.*

13. Where a debtor conveys lands to his creditor in trust to sell and from the proceeds to satisfy the debt and pay the balance to the debtor, and the debtor dies without having paid the debt, and without having elected to take the land instead of its proceeds, his personal representative is the proper party to compel the execution of the trust by a sale of the lands. *Craig* v. *Jennings*, 473.

14. After such trust has been executed by a sale under a decree at the suit of the administrator, it is too late for the heir to elect to take the land. *Id.*

DEBTOR AND CREDITOR.

15. The payment by a debtor of a part of his liquidated debt is not a satisfaction of the whole, unless made and accepted upon some new consideration. Where, however, the debt is unliquidated and the amount is uncertain, this rule does not apply. *Baird* v. *United States*, 598.

DECEDENT'S ESTATE. See EXECUTOR AND ADMINISTRATOR.

DECEIT. See FRAUD, 3, 4; INFANT, 1.

1. Where a party making false representations of his solvency to induce credit, at the time believed them to be true, he is not liable to an action of deceit. *Dilworth* v. *Bradner*, 738.

2. It was erroneous for the court to say that the jury must decide whether the party making such representations had *reasonable grounds* for his belief that they were true. *Id.*

DEED. See HUSBAND AND WIFE, 34; TRUST AND TRUSTEE, 5; WATERS, 1.

1. The conditions upon which an *escrow* was to be delivered to the grantee therein named, may be proved by parol. *Campbell* v. *Thomas*, 135.

2. Where the grantor in the deed retains the right of control over it, it is *not an escrow*. *Id.*

3. The mere facts that a deposit with a third person was made in pursuance of a previous *oral* agreement between the grantor and the grantee for a sale of the land, and that a small part of the agreed price was paid at the time of such agreement, will not deprive the grantor of his right of control over the deed. *Id.*

4. Such a deposit makes the deed an escrow: 1. Where there is a prior valid contract between the parties named in the deed, for the sale of the land. 2. Where the delivery of the deed to the depositary itself passes title to the grantee. *Id.*

5. Conveyances by officers of the law, discussed. *Note to True* v. *Emery*, 162.

6. Validity of deed of alleged lunatic, discussed. *Note to Scanlan* v. *Cobb*, 312.

7. Delivery of deeds after the grantor's death, by a third party to whom they were delivered by the grantor, under instructions to give them to the grantees immediately after his death, is effectual to render them operative. *Latham* v. *Udell*, 473.

8. The law has no concern with the reasons which have induced a grantor or testator to discriminate against one of his children. *Id.*

9. It is not unlawful for a wife to exert an influence over her husband for her own benefit or for that of others, unless she acts fraudulently, or extorts benefits when her husband is not a free agent. *Id.*

10. When a deed conveying land does not accurately describe the land intended to be conveyed, it is the duty of the grantee to tender to the grantor, for execution, a confirmatory deed. *Heck* v. *Remka*, 536.

11. In locating lands, the calls always prevail over the courses and distances. *Id.*

12. If parties have taken possession of land and occupied for a series of years under a deed containing an erroneous description, the mistake, as against the grantor and his representatives, will be corrected, where the evidence clearly shows such mistake. *Broadwell* v. *Phillips*, 608.

13. Rights of third persons acquired in good faith are not affected by the reformation of a deed. *New Orleans Canal and Banking Co.* v. *Montgomery*, 136.

DEMURRAGE. See SHIPPING, 6.

DIVORCE. See ABATEMENT, 1; HUSBAND AND WIFE, I.

DOMICILE. See CORPORATION, 7; HUSBAND AND WIFE, 14; WILL, 9.

DONATIO CAUSA MORTIS. See GIFT, 1.

A check drawn by a testator payable to his wife or her order, given to her shortly before his death, endorsed by her and paid into a foreign bank against the amount of which she drew: *Held*, a good *donatio mortis causa*, although

DONATIO CAUSA MORTIS.
the check was not presented for payment at the bank on which it was drawn till after the death of the testator. *Rolls* v. *Pearce*, 200.

DOWER. See HUSBAND AND WIFE, II; LEGACY.

DRUNKENNESS. See CRIMINAL LAW, 19, 39; WILL, 6-8.

EASEMENT. See MUNICIPAL CORPORATION, 13.
1. Upon the question whether a certain alley-way had been acquired by adverse possession: *Held*, that a claim of right made while using the alley by a former owner from whom the present claimant derived title, was admissible as giving character to the use of the alley and showing it to have been adverse. *Turner* v. *Baldwin*, 136.
2. An easement in light and air, to be supplied to the ancient windows of one person from the premises of another, cannot be acquired in Indiana by mere use or prescription. *Stein* v. *Hauck*, 435.
3. By the act of that state "touching easements," the legislature intended neither to recognise nor adopt the English rule in relation to easements in light and air, but to prevent the future acquisition of such easements, except in conformity with the provisions of such statute. *Id.*
4. The right to an ancient light is not to be measured by the purpose for which the light actually was used. *Moore* v. *Hall*, 598.
5. Implied grants are not to be favored, and will not be held to exist except in cases of clear necessity. *Doliff* v. *Boston and Maine Railroad*, 793.
6. In an action by the owners of a factory against the defendants for excavating the soil of an adjoining house in such a manner as to leave the foundation of part of the factory without sufficient lateral support, and thereby causing it to fall, it appeared that the two buildings had apparently been erected at the same time, and were estimated to be upwards of one hundred years old. Both had been occupied as dwelling-houses until about twenty-seven years before the accident, but the plaintiffs' predecessor had then converted his house into a coach factory, removing the internal walls, and erecting a stack of brickwork, which both served as a chimney stack and supported the girders which had to be put up to sustain the floors. The defendants, in taking down the adjoining house and in digging cellars which had not previously existed, left a support for the chimney stack which proved insufficient, and it fell, drawing after it the entire factory: *Held*, that no grant of a right of lateral support for the factory by the adjacent land could be presumed from the enjoyment of such support by the plaintiff for twenty years. *Angus* v. *Dalton*, 645.

ECCLESIASTICAL LAW. See COURTS, 1-4.
The nature of the contract between a minister and his church discussed. *Note to Perry* v. *Wheeler*, 33.

EJECTMENT.
1. A defendant in an action of ejectment, who claims adversely to both the parties to a mortgage, cannot avail himself of the mortgage as an outstanding title to defeat the action. *Hardwick* v. *Jones*, 339.
2. A person claiming title to land does not forfeit his right by attempting to buy in a conflicting claim. *Id.*
3. It is no objection to the plaintiff's title in ejectment that he is not a purchaser for a valuable consideration. *Id.*

ELECTION. See CONSTITUTIONAL LAW, 5.
1. Ballots cast at an election are the primary and controlling evidence. As between the ballots cast at an election and a canvass of those ballots by the election officers, the former are the controlling evidence. *Hudson* v. *Solomon*, 104.
2. In order to continue the ballots as controlling evidence it must appear that they have been preserved in the manner and by the officers prescribed in the statute, and that while in such custody they have not been so exposed to the reach of unauthorized persons as to afford a reasonable probability of their having been changed or tampered with. *Id.*

EMINENT DOMAIN. See CONSTITUTIONAL LAW, III; WAY.

EQUITY. See BOND, 1; DEED, 12, 13; FRAUD, 2; INJUNCTION; MUNICIPAL CORPORATION, 5, 6; PARTNERSHIP, 11; SPECIFIC PERFORMANCE, 2–3.

1. Both the original and cross-bill constitute one suit and ought to be heard at the same time. Consequently any decision or decree in the proceedings upon the cross-bill is not a final decree in the suit and not the subject of an appeal. *Ex parte Alabama Railroad Co.*, 136.

2. A cross-bill must grow out of the matters alleged in the original bill, and is used to bring the whole dispute before the court, so that there may be a complete decree touching the subject-matter of the action. *Id.*

3. A mistake entitling a party to relief in equity must be a mistake of fact, without negligence on his part. *Upham* v. *Hamill*, 48.

4. Ignorance of legal consequences is not a mistake of fact for which equity will grant relief. *Id.*

5. A purchaser at an execution sale cannot in equity be excused from consummating his purchase, because he supposed himself to be buying the entire estate in question, and not the "right, title and interest" of the judgment debtor in it. *Id.*

6. A court of equity has power to specifically enforce a lessee's covenant to build or repair, where, from the impossibility of estimating damages or the danger of irreparable loss, an action at law would be an inadequate remedy. *Kentucky River Navigation Co.* v. *Commonwealth*, 176.

7. In such a case the insolvency of the lessee is no defence. *Id.*

8. Forfeitures are not favored in equity, but there are cases where a rescission of the contract may be decreed, although the act or omission does not fall within any express condition of forfeiture. *Id.*

9. In an action at law on a promissory note, facts which constitute mere matter of defence will not, in general, entitle the defendant to equitable relief. *Quebec Bank* v. *Weyand*, 200.

10. It is error to decree a cancellation of such note, for the mere purpose of preventing an anticipated erroneous judgment by a court of law. *Id.*

11. A court of equity has jurisdiction to establish a title to real estate by estoppel against a former owner who by representations has induced another to purchase from his grantee under a void deed. *Wade* v. *Bunn*, 275.

12. The power of a court of equity to relieve against a judgment upon the ground of fraud is well settled. *Brown* v. *County of Buena Vista*, 339.

13. The power extends also to cases of accident and mistake. But such relief is never given upon any ground of which the complainant could have availed himself in the proceeding at law. *Id.*

14. In a suit in equity relief can only be granted in accordance with some one or more allegations in the bill. *Stover* v. *Poole*, 339.

15. A court of equity will not set aside a voluntary conveyance as between the parties, unless upon the ground of fraud. *Id.*

16. To obtain relief on the ground of mistake, it must appear in the bill what it is that is relied upon; and the proof must follow the allegation, so that the court may know precisely what is asked and what is the relief sought. *Id.*

17. Where relief is sought on the ground of fraud, it is sufficient to set forth the substance of the transaction and the result, and relief will not be denied if it be shown that the fraud was successfully accomplished, though in a manner different from that charged. *Merrill* v. *Allen*, 738.

18. In the case of a general creditor's suit, the simple fact that a party appears and files his claim, raises the presumption that he intends to make himself a party to the record. *Thomas* v. *Farmers' Bank of Maryland*, 340.

19. Where, in an action on an agreement to abandon a certain business in a specified town, the plaintiff alleged a breach of the agreement to his damage a specified sum, for which he asked judgment, and then stated that by reason of the defendant's insolvency he would be remediless, unless the defendant was restrained from further violating the agreement, and prayed for a perpetual injunction, and the defendant answered denying the agreement: *Held*, that the bill would not lie. *Brundridge* v. *Goodlove*, 405.

EQUITY.

20. The misapplication of the funds of a corporation by its officers or agents, authorizes the company to resort to equity in order to compel such officers to account for such breach of trust, even though it were conceded that an adequate remedy at law exists. *Citizens' Loan Association* v. *Lyon*, 536.

ERRORS AND APPEALS. See BILL OF EXCEPTIONS, 5, 6; EVIDENCE, 11; HABEAS CORPUS; PLEADING, 3.

1. The Supreme Court has no jurisdiction to revise the action of an inferior court upon granting or refusing a new trial, and the final judgment of such court cannot be examined through its rulings upon that question. *Kerr* v. *Clampitt*, 275.

2. A superior court must have before it a bill of exceptions upon which the final judgment of the court below may be reviewed, or it will not examine into any alleged errors, except such as are otherwise apparent on the face of the record. *Id.*

3. The Supreme Court can only re-examine the final judgment in the suit, and for that purpose must look alone to the record of that judgment as it is sent to them. *Goodenough Co.* v. *Rhode Island Co.*, 200.

4. Upon a writ of error to reverse a judgment by default, such defects in a declaration or complaint as could have been taken advantage of before judgment by general demurrer may be brought under review. *McAllister* v. *Kuhn*, 474.

ESCAPE. THE LAW IN CIVIL ACTIONS, 345, 417, 481, 545.

ESCROW. See DEED, 1–4.

ESTOPPEL. See CORPORATION, 4; EQUITY, 11; INSURANCE, 1; JUDGMENT, 2; LANDLORD AND TENANT, 1; TRUST, 5.

1. Where a declaration is made to one person, and is not intended for others, a bystander, who overhears it, cannot set it up as an estoppel. *Kinney* v. *Whiton*, 137.

2. Plaintiffs having bought a lot, relying upon the opinion of defendant, an attorney at law, that the title was good, subsequently sold the lot to defendant on credit, giving him a bond for title. In a suit to recover the price defendant was estopped to show that plaintiffs had acquired no title to the lot. *Soward* v. *Johnston*, 276.

EVIDENCE. See AGENT, 11; ATTORNEY, 1–3; BILLS AND NOTES, 9, 16, 17; CRIMINAL LAW, 3, 16, 20, 36, 39; GUARANTY, 1; INSANITY, 5; INSURANCE, 2, 3, 5, 6, 21; LIBEL, 3, 4; MORTGAGE, 15; SLANDER, 4; SURETY, 7; TRIAL, 3; WILL, 11; WITNESS.

1. Although a written agreement cannot be varied by proof of the circumstances out of which it grew, yet such circumstances are constantly resorted to for the purpose of ascertaining the subject-matter, and the standpoint of the parties in relation thereto. *Reed* v. *Ins. Co.*, 65.

2. When a contract is first made by parol for the sale and purchase of a horse, and a paper subsequently signed by the vendor, plainly intended to be nothing more than a receipt for the purchase-money, parol evidence is admissible of representations as to the soundness of the horse, made by the vendor at the time of the sale. *Perrine* v. *Cooley*, 137.

3. A witness cannot testify to a conclusion of law. *Hoener* v. *Koch*, 276.

4. Parol evidence is admissible to show that goods charged by the plaintiffs to B. were sold upon the credit of a corporation of which he was agent, and that the corporation received the goods and credited the plaintiffs for them. *Northford Rivet Co.* v. *Blackman Manufacturing Co.*, 276.

5. The plaintiffs took the individual note of B. on account of the goods, but it was not given or taken as payment of the account. *Held*, that this did not discharge the liability of the corporation. *Id.*

6. Parol evidence is inadmissible to contradict or change the legal import of a negotiable note in the hands of an endorsee. *McSherry* v. *Brooks*, 342.

7. Written misrepresentations do not exclude oral ones. *Match* v. *Hunt*, 406.

8. In an action upon an instrument referring to a proposal to build a rail-

EVIDENCE.

road, and binding the signers to give their notes in aid thereof, evidence of what the proposition was is admissible. *Railroad Co.* v. *Starnes*, 794.

9. Where a plaintiff sues for damages from negligence claimed to have produced a permanent disability, the defendant may compel plaintiff to submit to a personal examination by physicians to enable them to testify to the nature and extent of his injuries. *Schroeder* v. *Railroad Co.*, 119.

10. Where, on an action for injuries by the defendants' negligence, the plaintiff is examined by medical men, their reports procured by the defendants' attorney for the purpose of enabling him to give advice to the defendants with reference to the action, are privileged from inspection. *Friend* v. *The London, Chatham & Denver Railway Co.*, 65.

11. The character of offers made in the presence of the jury may be such, even although the offers were rejected below, as to require, on error, a reversal of the judgment, where the party making such rejected offers obtains a verdict. *Scripps* v. *Reilly*, 674.

12. All incompetent testimony should be excluded from the knowledge of the jury. *Id.*

13. In a suit in equity to quiet title and restrain an action of ejectment, a deposition of a witness in that action who has since died is competent, the action at law having been substantially between the same parties and for the same land. *Wanner* v. *Sisson*, 544.

14. The presumption of innocence as probative evidence is not applicable in civil cases, nor in revenue seizures. *Lilienthal* v. *The United States*, 405.

15. In criminal cases the true rule is that the burden of proof never shifts; that in all cases the jury must be satisfied defendant is guilty. *Id.*

16. In a civil action to recover damages for a criminal act, the same degree of proof is required as would be necessary to convict the defendant upon an indictment for the crime. *Barton* v. *Thompson*, 536. See INSURANCE, 21.

17. Although the general rule is, that a party cannot impeach the general reputation for truth of his own witness, yet he may prove the truth of any particular fact relative to the issue by any other competent testimony, in direct contradiction of what one of his witnesses has testified. *Smith* v. *Ehnert*, 406.

18. Where a contract is attested by a witness, such witness must be called before the testimony of other witnesses can be received to prove that the maker's signature is genuine. *Warner* v. *Railroad Co.*, 474.

19. Evidence impeaching return of officer of court, discussed. *Note to Mastin* v. *Duncan*, 574.

20. Standards of comparison to be used by experts upon the trial of an issue as to the genuineness of a signature are not admissible for that purpose, unless they are clearly proved by witnesses who testify directly to their having been written by the party whose signature is in question. *Pavey* v. *Pavey*, 598.

21. The testimony of experts is like any other testimony; its value depends on all the facts and circumstances of the case, and an instruction that such "opinions are a very weak class of evidence and depend upon the facts stated for weight," is erroneous. *Eggers* v. *Eggers*, 383.

EXECUTION. See ATTACHMENT; ATTORNEY, 3; PARTNERSHIP, 3; SHERIFF, 2.

EXECUTORS AND ADMINISTRATORS. See DEBTOR AND CREDITOR, 13; LIMITATIONS, STATUTE OF, 10.

1. An administrator is merely the agent or trustee of the estate of the decedent, acting immediately under the direction of the law prescribing his duties. *Collamore* v. *Wilder*, 135.

2. Where an executor did not deposit the money of the estate in bank, but used it as he wanted it, in his own business, *Held*, that he was chargeable with interest on balances in his hands. *Clauser's Estate*, 201.

3. *Held*, however, that he was not chargeable with interest on a sum improperly paid by him as counsel fees, for which he was refused credit in his account. *Id.*

EXECUTORS AND ADMINISTRATORS.

4. Compensation is allowed to trustees as a reward for the faithful execution of the trust. *Id.*

5. Although an executor is a trustee, and as such may be held accountable in a court of equity, yet the sureties maintain no such relation. Their obligation being one of contract, the remedy for a breach of it must be by an action at law on the bond. *Edes* v. *Garey*, 340.

6. If there be any exception to this general rule, there must be *special and peculiar circumstances*, making the exercise of jurisdiction necessary to the protection of the rights and interests of parties. *Id.*

EXECUTORY DEVISE. See CHARITY, 6.

EXPERT. See EVIDENCE, 20, 21; HIGHWAY, 3; INSANITY, 5; WILL, 8.

EXPRESS COMPANY. See AGENT, 14, 15; COMMON CARRIER, 10, 11.

EXTRADITION.

As to trial for offences not included in the extradition treaty, see *Hawes* v. *Commonwealth*, 536.

FACT. See EQUITY, 4.

FALSE PRETENCE. See CRIMINAL LAW, IV.

FIXTURES. See CRIMINAL LAW, 33; LANDLORD AND TENANT, 9, 10; MORTGAGE, 8.

FOREIGN CORPORATION. See CORPORATION, 4, 5, 6, 9.

FOREIGN JUDGMENT. See UNITED STATES COURTS, 3.

1. The attestation of a foreign record, under section 905 of the Revised Statutes of the United States, must be made by the clerk in person. *Railway Co.* v. *Cutter*, 138.

2. In an action on the record of a judgment of a sister state, duly authenticated, as required by Act of Congress of May 26th 1780, such judgment is entitled to full faith and credit, if it appears that such court had jurisdiction over the subject-matter and the person. *Sipes* v. *Whitney*, 201.

FOREIGN STATUTE. See PLEADING, 11.

FORFEITURE. See CORPORATION, 11, 25; EQUITY, 8; INSURANCE, 6, 7.

FORMER ADJUDICATION.

1. In order to constitute one suit an estoppel in another, four conditions must exist, viz.: there must be an identity of the cause of action, of the parties, of the character in which the parties sue, and of the thing in controversy. *Blackwell* v. *Dibrell*, 516.

2. Where an action to set aside a contract on the ground of fraud, and to cancel an unmatured note given in pursuance of the contract, resulted in a judgment affirming the validity of the contract and note: *Held*, that in a subsequent action on the note, the defendant is estopped from setting up that the contract and note were executed under a mutual mistake. *Bell* v. *McCutlough's Ex.*, 673.

3. Where a party brings an action for a part only of an entire indivisible demand and recovers judgment, he cannot subsequently maintain an action for another part of the same demand. *Baird* v. *United States*, 598.

4. A judgment dismissing an action without prejudice to a future action is an entirety, and, though it may have been so rendered erroneously, it will not constitute a bar to a subsequent action upon the same subject-matter. *Wanzer* v. *Self*, 406.

5. The complaint prayed that the defendant's interest in certain real estate might be adjudged a mortgage; that deeds of partition between them might be adjudged void as against plaintiff; that an account might be taken of their advances to plaintiff and of the rents, issues and profits chargeable to them; and that, upon payment of any balance found due them, they might be adjudged to reconvey to plaintiff. A former judgment herein directed that plaintiff "have judgment for the relief demanded in the complaint, conditioned

FORMER ADJUDICATION.
upon the payment of whatever may be due." *Held*, that even if such judgment were rendered without the court having its attention called to the effect upon the details of the accounting between the parties, no rehearing having been asked, they must control the present appeal so far as they apply. *Wilcox* v. *Bates*, 406.

FRANCHISE. See RIPARIAN RIGHTS, 2–5.

FRAUD. See CORPORATION, 20, 22, 25; DEBTOR AND CREDITOR, 1–3; EQUITY, 11, 12, 15, 17; INFANT, 1; SALE, 6.
1. Where the money of an innocent person has gone into the coffers of the nation by means of a fraud to which its agent was a party, such money cannot be held by the United States against the claim of the injured party. *United States* v. *Bank*, 474.
2. The interposition of equity is not necessary where a trust fund is perverted. The *cestui que trust* can follow it at law as far as it can be traced. *Id.*
3. A contract for the purchase of goods on credit, made with intent on the part of the purchaser not to pay for them, is fraudulent; and if the purchaser has no reasonable expectation of being able to pay, it is equivalent to an intention not to pay. *Talcott* v. *Henderson*, 474.
4. But where the purchaser intends to pay and has reasonable expectations of being able to do so, the contract is not fraudulent, although the purchaser knows himself to be insolvent and does not disclose it to the vendor, who is ignorant of the fact. *Id.*

FRAUDS, STATUTE OF. See CHAMPERTY, 4; CONTRACT, 1; SALE, 5.
1. A contract for the sale of land in which the vendor is not named, but is stated to be "a trustee selling under a trust for sale," is sufficient within the statute. *Marsden* v. *Kent*, 202.
2. Although the parties may be longer than a year in the performance of a contract, still, if that performance may be completed within a year, such contract is not within the statute. *Blakeney* v. *Goode*, 407.
3. To make a parol contract void, it must appear affirmatively that it was not to be performed within a year. *Walker* v. *Johnson*, 537.
4. A sheriff levied an execution on real estate; it was bought by T. at $11,050. T. refused to execute a sale bond, or pay for the land. The land was resold for $9000. In an action against T. for the difference, it was *held*, that the sale was within the statute. *Warehouse Co.* v. *Turrill*, 538.
5. Where a contract for land is executory on both sides, it is necessary that the sale and the price both be evidenced by a memorandum signed by the parties to be charged. *Id.*
6. No action can be maintained to recover back money paid upon a verbal contract for the purchase of land. *Galway* v. *Shields*, 673.
7. An action may be sustained for breach of a verbal promise of marriage. It is not within the Statute of Frauds. *Short* v. *Stotts*, 587.

FRAUDULENT DEBTORS. See INSOLVENCY, 2.

GARNISHMENT. See ATTORNEY, 3; ATTACHMENT; DEBTOR AND CREDITOR, 11.

GIFT.
1. The death of a drawee before payment revokes a check given. *Simmons* v. *Cincinnati Savings Society*, 673. See DONATIO CAUSA MORTIS.
2. T. transferred stock to F., a niece of his wife, on the books of a corporation, but retained the certificates in his possession, and after his death they were found in an envelope, with his own name and that of F. endorsed thereon. F. had no knowledge of the transfer. She lived in the family of T. and was in all respects treated and regarded as his daughter: *Held*, the legal title was in F. *Roberts's Appeal*, 738.
Held further, that the circumstances of the case rebutted the presumption of a resulting trust. *Id.*

GOVERNMENT. See UNITED STATES.

GUARANTY. See BILLS AND NOTES, 10–15; MUNICIPAL CORPORATION, 8; SURETY, 4–5.

1. A guarantor, in writing, of the payment of a debt when due, will not be permitted to show by parol that it was understood that he should be liable only as a guarantor of the collection of the debt. *Neill* v. *Trustees*, 538.

2. The contracts of a maker and a guarantor of commercial paper are separate and distinct, and cannot be joined as one cause of action against both. *Cole* v. *Bank*, 703.

3. A guaranty written on a negotiable note or bill, addressed to no particular person, partakes of the negotiable quality of the note, and passes as an incident to it, to every *bona fide* holder for value. *Id.*

4. A guaranty is assignable in equity, and under the code of Indiana, the assignee may sue upon it in his own name. *Id.*

5. The guaranty of the payment of the debt of another, made at the time the debt is contracted, does not constitute the guarantor and the principal debtor joint promisors. *Deming* v. *Trustees*, 474.

GUARDIAN. See JUDICIAL SALE, 1.

HABEAS CORPUS.

A writ of *habeas corpus* cannot determine the same questions as a writ of error. *In re Coffeen*, 407.

HARBOR LINE. See WATERS AND WATERCOURSES, 1.

HIGHWAY.

1. A city is bound only to the exercise of reasonable prudence and diligence in the construction of a step from a higher to a lower sidewalk. *Chicago* v. *Bixby*, 276.

2. Power given by a charter of a railroad company to construct its road across a public highway, upon condition that the same be restored to its former state, does not authorize the company permanently to appropriate any portion of the public highway by obstructions which materially interfere with the public travel. *Railroad* v. *Commissioners*, 673.

3. The insufficiency of a highway is a question of fact and not one for the opinions of experts. *Benedict* v. *Fond du Lac*, 738.

HOMESTEAD. See HUSBAND AND WIFE, 6, 17.

HUSBAND AND WIFE. See DEBTOR AND CREDITOR, 6; DEED, 9.

I. *Marriage, Divorce and Alimony.* See ABATEMENT.

1. Insanity occurring after marriage is not a cause for divorce, and nothing which is a consequence of it can be. *Powell* v. *Powell*, 138.

2. A marriage with an insane person is absolutely void, for want of capacity to consent. *Id.*

3. If a marriage is void by reason of the insanity, no judgment annulling such marriage is necessary, yet a sentence of nullity in such a case is conducive to good order. *Id.*

4. Courts in this country possess in actions for divorce only the powers conferred by statute. *Bacon* v. *Bacon*, 276.

5. *Alimony* is not an estate, but an allowance, annual or in gross, out of the husband's estate, for the nourishment of the wife; and the court granting it may from time to time revise its judgment. *Id.*

6. Upon granting a divorce to the husband by reason of the fault of the wife, the court has power to decree the sum allowed as alimony to the wife a lien upon the real estate of the husband, and the homestead may be sold in satisfaction of said lien. *Blankenship* v. *Blankenship*, 475.

7. Conduct and reputation are sufficient proof of marriage in cases involving property rights. *Proctor* v. *Bigelow*, 407.

8. Marriage is not a contract protected by the constitution of the United States or any of its amendments. It is a civil status under the control of the states, and the existence of the relation and the rights, obligations and duties arising out of it, are to be determined exclusively by state laws. *Frasher* v. *State of Texas*, 459.

9. The provision of the Texas code, making marriage of a white person to

HUSBAND AND WIFE.
a negro an indictable offence, is not repugnant to or avoided by the fourteenth and fifteenth amendments to the constitution of the United States, or the legislation of Congress under them. *Frasher* v. *State of Texas*, 459.

10. The fact that by the code the penalty is imposed on the white person only does not make it obnoxious to the Civil Rights Bill. *Id.*

11. Marriage is a civil contract, and at common law when made *per verba de presenti* is valid as of common right. *Meister* v. *Moore*, 598.

12. Though a state may by statute declare no marriage valid unless solemnized in a prescribed form, yet such construction will not be given to the law unless the legislative intention to that effect be plainly expressed. *Id.*

13. Hence, forms prescribed by statute are treated as directory only, and a marriage, good at common law, is held valid, notwithstanding the disregard of statutory forms, unless the statutes contain express words of nullity. *Id.*

14. A marriage illegal by the law of the domicile is null and void. *Sottomayer* v. *De Barros*, 599.

15. A court of equity will protect a husband against a voluntary conveyance or settlement by his intended wife of all her estate, to the exclusion of the husband, made pending an engagement of marriage, without his knowledge, even in the absence of express misrepresentation or deceit, and whether the husband knew of the existence of the property or not. *Chandler* v. *Hollingsworth*, 309.

16. The wife's right of dower will be protected against the voluntary conveyance of the husband, made pending a marriage engagement, under the same circumstances in which the husband is relieved against an antenuptial settlement by the wife. *Id.*

II. *Curtesy and Dower.* See LEGACY, 1.

17. The surviving husband or wife cannot enjoy at the same time both dower or curtesy and homestead in the real estate of decedent, and must elect which of those rights he or she will take. *Butterfield* v. *Wicks*, 65.

18. The continued occupancy of the property by the husband will be regarded as an election to hold it as a homestead. *Id.*

19. The right of occupancy and possession by the survivor confers no title to the property, and he cannot execute a valid mortgage thereon. *Id.*

20. Rights of dower are barred by the statute of limitations. *Proctor* v. *Bigelow*, 407.

21. A widow's election to take her dower instead of a legacy in lieu thereof, made under a mistake as to her rights, may be revoked, *nunc pro tunc*, if it can be done without prejudice to the rights of others. *Macknet* v. *Macknet*, 538.

22. When dower is to be assigned in estates aliened by the husband, the widow is to be endowed according to their value at the time of the assignment, deducting the enhancement by the purchaser's improvements, but allowing for all other increase in value. *Wescott* v. *Campbell*, 136.

III. *Separate Estate.* See *infra* 32, 33, 41; DEBTOR AND CREDITOR, 6.

23. A settlement by a husband who is not in debt and not in contemplation of any new or unusual business ventures, of a part of his estate, not exceeding one-sixth of the whole, upon his wife, is valid. *Jones* v. *Clifton*, 713.

24. Such a settlement is not invalid because not made in due legal form by the intervention of a trustee. *Id.*

25. Nor is such settlement made invalid by the insertion of a power of revocation in the husband. *Id.*

26. The exercise of the power of revocation in favor either of himself or of a stranger would terminate the separate estate of the wife and subject the property to the claims of the settlor's creditors. But an assignment in bankruptcy by the settlor is not an exercise of the power of revocation, nor does it pass that power to his assignee. *Id.*

27. Powers of revocation and appointment over property within a voluntary settlement, even though such as may be exercised by a bankrupt for his own benefit, do not pass by an assignment or an adjudication in bankruptcy;

HUSBAND AND WIFE.

nor will equity compel the bankrupt to execute them for the benefit of the assignee. *Jones* v. *Clifton*, 713.

28. A voluntary conveyance of land made by a husband to his wife, will not be held void as to future creditors on the mere ground that the husband subsequently became insolvent. *Evans* v. *Lewis*, 202.

29. Such conveyance will be set aside at the suit of a subsequent creditor, only on proof that it was made with intent on the part of the grantor thereby to defraud such subsequent creditor or creditors. *Id.*

30. One having a valid cause of action sounding in tort, against such grantor, at the time of such conveyance, upon which an action was subsequently brought and judgment recovered, is to be regarded as a *subsequent creditor*. *Id.*

31. In order to charge the debts contracted by a married woman upon her separate estate as a lien in equity, it is necessary that it should appear that her contract was made with direct reference to her separate estate. *Wilson* v. *Jones*, 407.

IV *Contracts, Conveyances and Liabilities.*

32. In the statute which declares that a married woman "may receive by grant," the word grant includes deeds of bargain and sale of land. *McVey* v. *Railway Co.*, 138.

33. Where a conveyance is made by a stranger to a married woman, the presumption is that the consideration was paid by her, and not by her husband. *Id.*

34. A statute providing that husband and wife may convey the wife's land by deed, signed, sealed and delivered by them, respectively, a deed drawn as the individual deed of a married woman, throughout, down to the attestation clause, which read, "In testimony whereof, we have hereunto set our hands and seals," signed, sealed and acknowledged, by both husband and wife, the wife's acknowledgment being separately taken: *Held*, that the deed was a nullity. *Warner* v. *Peck*, 202.

35. One who signs a note or bond with a married woman, is the only party bound, and his being a surety makes no difference in the liability. *Unangst* v. *Fitler*, 202.

36. The husband is liable for necessaries furnished a wife who for sufficient cause has left his bed and board. *Thorpe* v. *Shapleigh*, 340.

37. The articles furnished must be necessaries, regard being had to the condition of the parties, else no recovery can be had. *Id.*

38. A wife after a separation from her husband has no implied authority to pledge his credit. *Eastland* v. *Burchell*, 794.

39. Where an action is against husband and wife for a tort committed by the wife, the liability of the husband necessarily follows from the existence of the marital relation, and when this is not disputed, a verdict that the wife is guilty disposes of the whole issue raised by a joint plea of not guilty. *Ferguson* v. *Brooks*, 341.

40. The presumption that in case of tort committed by the wife in the presence of the husband the wife is under coercion, is not conclusive. *Id.*

41. The ancient doctrine that a married woman cannot be a trespasser by prior or subsequent assent, is so far modified by statutes giving them the power to manage and control their own property, that as to all acts done in their name and behalf for the enforcement of their supposed rights in such property, they are responsible, like other parties not under disability, for what they authorize or ratify. *Id.*

INDIAN COUNTRY. See OFFICER, 5.

INDICTMENT. See CRIMINAL LAW, 7–13, 34, 35.

INFANT.

1. Infancy is a bar to an action on the case for false and fraudulent representations by a vendor as pledgor as to his ownership of property sold or pledged. *Doran* v. *Smith*, 42.

INFANT.

2. Liability of minor when there is a combination of a contract and a tort, discussed. *Note to Doran* v. *Smith*, 44.

3. An undertaking by an infant as surety for the stay of execution is not void, but only voidable, and when ratified by him after arriving at majority, becomes a valid contract. *Harner* v. *Dipple*, 708.

INJUNCTION. See WATERS, 3.

1. A suitor who seeks to have a public improvement enjoined must apply promptly, show an invasion of a clear right, and that he has no other adequate remedy. *Traphagen* v. *Jersey City*, 538.

2. A suitor who by laches has made it impossible for the court to enjoin his adversary without inflicting great injury upon him, will be refused aid. *Id.*

3. The writ of injunction does not issue of right, but is discretionary, its purpose being to stay evils the consequences of which could not adequately be compensated in damages. *Edwards* v. *Mining Co.*, 475.

4. Generally, courts have no concern with a party's motives in doing any lawful act; but where one invokes the aid of equity, averring that, under the peculiar circumstances of his case, the rules of the common law do not afford him adequate redress, it may be inquired how he came to be placed in such circumstances. *Id.*

5. Where a party bought lands on the banks of a stream, with the sole purpose of forcing their repurchase at a great advance by the proprietor of a costly quartz-mill above, *held*, that complainant's motives in purchasing might be inquired into, and that instead of granting an injunction, the court would leave complainant to his remedy in damages. *Id.*

INSANITY. See CRIMINAL LAW, 17-19; HUSBAND AND WIFE, 1-3; INSURANCE, 20; LUNATIC.

1. When the mind is so deranged that a person cannot understand the effects and consequences of an act, the law will relieve him; but so long as he is possessed of the requisite mental faculties to transact rationally the ordinary affairs of life, he will not be relieved from responsibility. *Titcomb* v. *Vantyle*, 277.

2. Where a purchase from an insane person is made, and a conveyance obtained in good faith, for a sufficient consideration, the consideration must be returned before the conveyance will be avoided. *Scanlan* v. *Cobb*, 705.

3. Partial insanity does not, as a general rule, render a testator incapable of making a will, unless the insanity enters into or affects the will itself. *Eggers* v. *Eggers*, 383.

4. But under a statute which declares that no person of "unsound mind" shall be capable of making a will, the phrase "*of unsound mind*" includes every species of partial insanity and avoids a will made by a person partially insane, although the will was not the offspring of the insanity. *Id.*

5. An instruction that the opinions of medical experts upon mental unsoundness based upon hypothetical cases "are of no value unless the hypothetical cases are fully sustained by the evidence given in the cause," is erroneous. *Id.*

INSOLVENCY. See CONFLICT OF LAWS, 1; FRAUD, 4.

1. State insolvent laws are not superseded by the Bankrupt Act of Congress. *Burrill* v. *Hevener*, 371.

2. The Pennsylvania Act of 1842, for the arrest of fraudulent debtors, is in force, and the courts will enforce the act until proceedings in bankruptcy are actually commenced. *Id.*

INSURANCE.

I. *Generally.*

1. If an insurance company, with notice of facts rendering the policy voidable at its option, objects upon other grounds only to proofs of loss furnished, and subjects the insured to trouble and expense in furnishing new proofs, it will be estopped from setting up such facts in avoidance of the policy. *Gans* v. *Ins Co.*, 407.

2. Proofs of death furnished in compliance with a requirement of the policy

INSURANCE.
were offered in evidence by the plaintiff, for the purpose of showing such compliance. *Held*, 1st. That the same were admissible for that purpose and for no other, and their sufficiency was a question for the court to determine. 2d. That the said proofs being also offered in evidence by the defendant, were admissible as declarations of the plaintiff. *Ins. Co.* v. *Stibbe*, 408.

3. The statement of the plaintiff as to the cause of the death did not properly constitute any part of the proof of death required by the policy, but was a mere declaration, and as such the defendant was entitled to rely upon it though not conclusive. *Id.*

4. The statement of the physician was, that the disease of which the insured died, was "*cerebral congestion*, caused proximately by mental anxiety and remotely by drink." By the terms of the policy, it was to be void, "if the death shall be caused by the use of intoxicating drink or opium." *Held*, that the things prohibited should be the *direct* cause of the death, in order to avoid the policy. *Id.*

5. The preliminary proofs presented to an insurance company, in compliance with the conditions of the policy, are admissible as *prima facie* evidence of the facts stated therein against the insured. *Ins. Co.* v. *Higginbotham*, 358.

6. Where it is the practice of an insurance company to allow its agents to extend the time for payment of premiums, it is proper to submit evidence of such a practice to the jury. *Insurance Co.* v. *Norton*, 599.

7. If the agreement to extend be made before the note given for the premium matures, and before the forfeiture is incurred, it would be a fraud upon the insured to attempt to enforce the forfeiture when, relying on the agreement, he permits the original day of payment to pass. *Id.*

II. *Conditions, Representations, etc.*

8. It was stipulated, that if the property insured should be sold or transferred, or any change made in its title, without the assent of the company insuring, the policy should be void. The assured sold and conveyed the property for an agreed sum, to be paid in the future, the company assenting to the sale, but without knowledge of its terms. To secure the payment of the purchase price, the purchaser, at the time of the sale, and as a part of its terms, executed a mortgage of the property to the vendor. *Held*, that the assent given by the company to said sale was an assent to the terms upon which the same was made, and that the execution of said mortgage did not avoid the policy. *Insurance Co.* v. *Ashton*, 674.

9. Where the whole of a premium note payable in instalments becomes due upon failure to pay any instalment for thirty days, but such failure does not absolutely avoid the policy, but suspends it so that the company is not liable for a loss occurring during the continuance of such default, but upon the payment of the note (whether voluntarily or enforced) the policy revives and re-attaches, in such case the company may recover the full amount of the note, and thereupon the insured becomes the owner of a paid-up policy for the remainder of the original term. *Insurance Co.* v. *Klink*, 277.

10. A stipulation in the charter of an insurance company requiring all suits to be brought on policies issued by the company within twelve months from the date of loss is operative and binding. *Glass* v. *Walker*, 599.

11. Where the contract of insurance on a steamboat contains a "permission to navigate the Ohio and Mississippi rivers below Cairo," but contains no condition expressly avoiding the policy for navigating the boat outside of the permitted waters, and the boat made a trip outside of these permitted waters and returned in safety, where she was afterward destroyed by fire, *Held*, The policy was not avoided *Wilkins* v. *Insurance Company*, 599.

12. An insurance company issued a policy against fire for five years, the insured paying the first year's premium in cash, and giving his note promising to pay a sum named on March 1st of the succeeding year, a similar sum on the same day of the next year, and so on for the four years. The policy contained a clause that, in case of default of payment of any instalment of the premiums due upon this note for thirty days, the insurer should not be liable, and the policy should become void, but that, upon payment, the policy

INSURANCE.
should revive, and the liability of the insurer again attach, &c.: *Held*, that the policy was voidable at the option of the insurer only; that the premium note was not void or voidable by the insured, and he could not escape his liability upon it by making default, and that, at the end of the five years, the insurer could recover the amount of the note. *Insurance Company* v. *Henly*, 778.

13. A policy of life insurance having been determined by the failure to pay the premium falling due July 16th, the insured, on October 1st, applied for a reinstatement of the policy, gave a physician's certificate as to his health, and paid the premium to an agent, who forwarded the application and certificate to the company. The company reinstated the policy and sent its receipt, dated as of the preceding July 16th, to the agent, who, on October 14th, delivered it to the insured. *Held*, that the representation of the insured as to his health on October 1st was not continuous, and that in the absence of any representations on the 14th, a failure to communicate any change of condition of health between the 1st and that date did not constitute a misrepresentation. *Insurance Company* v. *Higginbotham*, 358.

14. Effect and duration of representations made in the course of negotiations for insurance. *Id. Note*, 367.

15. A policy of insurance provided as follows: "If the interest of the insured in the property be any other than the entire, unconditional and sole ownership of the property for the use and beneft of the insured, or if the buildings insured stand on leased ground, it must be so represented to the company and be so expressed in the written part of the policy, otherwise the policy shall be void." It was admitted at the trial that the insured were the owners in fee of the land where the buildings stood at the time of the fire. *Held*, that a failure to disclose a lease of the property did not avoid the policy. *Ins. Co.* v. *Haven*, 203.

III. *Marine.* See *supra* 11.

16. The clause in a policy, "the risk to be suspended while vessel is at Baker's Island loading," construed to mean, "while the vessel is at Baker's Island *for the purpose of loading*. *Reed* v. *Ins. Co.*, 65.

IV. *Life.* See *supra*, 2–5, 13.

17. A policy of life insurance is a chose in action. *Clark* v. *Allen*, 83.

18. The sale and assignment of a life policy, outstanding and valid, and containing no prohibition of such alienation, is good, though made to one who has no interest in the life insured, provided such sale and assignment is a *bona fide* business transaction, and not a device to evade law. *Id.*

19. The extent of the right of a creditor to insure the life of his debtor. *Id. Note*, 86.

20. It is not every kind or degree of insanity which will so far excuse the party taking his own life as to make the company insuring liable: to do this, the act of self-destruction must have been the consequence of insanity, and the mind of the deceased must have been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing. *Insurance Company* v. *Rodel*, 138.

V. *Fire.*

21. In an action on a policy of insurance against loss by fire, where the defence is that the property insured was wilfully burned by the assured, the rule in civil, and not in criminal cases, as to the quantum of proof, applies. *Kane* v. *Insurance Co.*, 293. See EVIDENCE, 16.

22. Policy provided that defendant should pay to the assured "any loss or damage by fire to the buildings" not exceeding 1600*l*. The premises were afterwards required by the Metropolitan Board of Works, under their compulsory powers, in order that they might be pulled down for the improvement of a street, and the amount of purchase-money payable to the plaintiff was assessed by arbitration. After the board had accepted the plaintiff's title, but before he had executed a conveyance, the premises were destroyed by fire: *Held*, that the defendants were liable to pay the plaintiff the full value

INSURANCE.
of the buildings at the time of the fire. *Collingridge* v. *Assurance Corporation*, 739.
23. Policies of fire insurance are contracts whereby the insurers undertake for a stipulated sum to indemnify the insured against loss or damage by fire to an amount not exceeding the sum specified in the written contract. *Ins. Co.* v. *Haven*, 203.

INTEREST. See EXECUTOR, 2, 3; NATIONAL BANK, 3.
1. When a note is given on time, with interest higher than the legal rate, the holder, after maturity, receives interest by operation of law and not under the contract. *Duran* v. *Ayer*, 341.
2. A contract to pay a sum named in ten years, "with interest annually at seven per cent. per annum until paid," means that the interest is due and payable each year. *Furling* v. *Clemmer*, 642.

INTOXICATING LIQUORS. See CONSTITUTIONAL LAW, 18, 19; CONTRACT, 8; OFFICER, 6.

INTOXICATION. See CRIMINAL LAW, 19, 39; INSURANCE, 4; WILL, 6–8.

JOINDER OF ACTIONS. See GUARANTY, 2, 5.

JOINT DEBTORS.
1. A joint defendant is liable to the full extent of the judgment. *Palmer* v. *Stacy*, 66.
2. Where a judgment was obtained against a town for injuries caused by the negligence of the co-defendant, the plaintiff is not compelled to resort to the property of the latter. *Id.*
3. He may ask a writ of mandamus to compel the levy of a tax for the payment of the judgment. *Id.*
4. It is no objection to the granting of the writ that it will promote a circuity of actions. *Id.*

JUDGMENT. See ASSIGNMENT, 1; ATTORNEY, 4; EQUITY, 12; FORMER ADJUDICATION; LIMITATIONS, STATUTE OF, 7; LUNATIC; SURETY, 2; UNITED STATES COURTS, 3, 4.
1. A judgment can only bind property within the jurisdiction of the court. *Harris* v. *Pullman*, 277.
2. Parol evidence is admissible to show that certain matters as to which a judgment is silent, were not adjudicated. *Sweet* v. *Maupin*, 341.
3. A scire facias against terre-tenants, is, so far as they are concerned, a proceeding strictly *in rem*, and it is essential that the land should be properly described. *Thomas* v. *Farmers' Bank of Maryland*, 341.
4. Where in a scire facias against terre-tenants, there is no sufficient description of the lands appearing of record, the court cannot resort to the evidence offered to the jury for the purpose of obtaining a description of the lands against which to render the judgment. *Id.*
5. A judgment rendered without jurisdiction may be impeached even in a collateral proceeding. *Mastin* v. *Duncan*, 564.
6. The want of jurisdiction, by reason of the party sued not having notice of the action, may be shown by parol evidence, even in a collateral proceeding. *Id.*
7. And such evidence is admissible to contradict the return of a sheriff or other officer set out on the record. *Id.*
8. A judgment cannot be rendered against one out of the jurisdiction of the court. *Godfrey* v. *Terry*, 795.
9. It is no fraud on the part of the holder of several judgments to sell under a junior judgment, notifying bidders of the lien of those which are older. *Hardwick* v. *Jones*, 339.
10. A note is not merged in a judgment rendered thereon in an action commenced by attachment where defendant was not personally served, and did not appear, and where no part of the judgment has been satisfied. *Smith* v. *Curtiss*, 674.
11. The negligence of attorneys in failing to interpose a defence where a

JUDGMENT.
valid one existed, does not constitute a sufficient ground for disturbing a judgment. *Jones* v. *Leech*, 539.
12. Where judgments assigned are cancelled by fraud and mistake, caused by defendants' misrepresentations to the plaintiff's attorney, the cancellation will be vacated. *Keogh* v. *Delany*, 674.

JUDICIAL SALE.
1. The purchaser of real estate at guardian's sale has no right to infer from the guardian's assurance that he will give a good title, that he is acquiring a title in fee simple, and such assurance being given in good faith, the purchaser is not entitled to equitable relief. *Findley* v. *Richardson*, 539.
2. The purchaser having acquired all the interest of the ward in the land, cannot refuse to pay a promissory note given for the purchase-money on the ground of a failure of consideration. *Id.*
3. The rule of *caveat emptor* applies to all sales of real estate made under judgments, after confirmation. As there is no warranty of title there can be no relief for defects. *Farmers' Bank* v. *Peter*, 539.

JURISDICTION. See JUDGMENT, 6–8; PATENT, 6.
1. Where an action, local in its nature, is founded on two things done in several counties, and both are material and traversable, and neither will alone support the action, it may be brought in either county. *Pilgrim* v. *Mellor*, 729.
2. Where a dam built in one county causes an overflow of land in another, the owner of the land may bring his action in either county. *Id.*

JUROR AND JURY. See CONSTITUTIONAL LAW, 23; CRIMINAL LAW, 14; VERDICT, 5.
1. On the trial of the validity of a challenge alleged against a juror, other than a principal challenge, a sound discretion is allowed to the court. *Dew* v. *McDivitt*, 621.
2. If a juror has formed an opinion in relation to a portion of the facts embraced in the issue, but not upon the whole issue, and, otherwise, stands indifferent between the parties, the allowance or refusal of the challenge is within the discretion of the court. *Id.*
3. Challenge to the favor discussed. *Id. Note*, 624.
4. It is the duty of the courts to enforce a rigid observance of the provisions of the statutes designed to preserve inviolate the right of trial by jury. *State* v. *Snider*, 739.
5. The presence of an unauthorized person during the deliberation of the jury is ground for setting the verdict aside and granting a new trial. *Id.*

LABORER. See SERVANT.

LACHES. See AGENT, 9; INJUNCTION, 1, 2.

LAND. See TENEMENT.

LANDLORD AND TENANT. See EQUITY, 6.
1. The tenant's leaving the keys with the landlord, and the latter's effort to rent the land, will not constitute a surrender. *Oastler* v *Henderson*, 203.
2. A landlord who has parted with possession to a tenant in occupation, is not responsible for injuries from defective condition of such premises arising during the continuance of the lease. *Shindlebeck* v. *Moon*, 450.
3. A lessee remains liable on his express agreement to pay rent, notwithstanding he may have assigned his lease with the lessor's assent, and the lessor has accepted rent from the assignee. *Lodge* v. *White*, 600.
4. But where the obligation of the lessee is only that which is implied by law from his occupation of the premises, his surrender of possession, with the assent of the lessor, extinguishes his liability. *Id.*
5. A lessor may maintain an action for rent against his lessee, on an express covenant to pay rent during the term, though the rent accrued after the lessee had assigned all his interest in the leasehold estate and the lessor had accepted rent from the assignee of the term. *Taylor* v. *DeBus*, 674.

LANDLORD AND TENANT.

6. In monthly tenancies, a month's notice to quit is sufficient. *Steffens* v. *Earl*, 600.

7. A notice must be to quit at the end of one of the recurring periods of holding, but a notice to quit on the day corresponding with the date of letting and entry is sufficient. *Id.*

8. Where no time is mentioned, the character of the tenure, as to time, will be controlled by the intervals between the payments. *Id.*

9. Where one takes a renewal of a lease, having previous to doing so a right to remove fixtures which he had erected, he does not lose this right by the renewal unless the terms of the lease are inconsistent with it. *Kerr* v. *Kingsbury*, 638.

10. A mortgagee takes with constructive notice of the rights of occupants. Where, therefore, a mortgage was given while the mortgagor was occupying the premises in partnership with a third person, and carrying on business in buildings erected thereon, and it turned out that in fact the lands had previously been conveyed away by the mortgagor by a deed not recorded, and that he and his partner occupied under a lease from the real owner: *Held*, that the mortgagee could not hold tenant's fixtures as against a subsequent assignee of the partnership. *Id.*

LARCENY. See CRIMINAL LAW, V.

LATERAL SUPPORT. See EASEMENT, 6.

LEGACY AND LEGATEE. See ACTION, 12; HUSBAND AND WIFE, 21.

A pecuniary bequest in lieu of dower is not subject to abatement for deficiency. *Potter* v. *Brown*, 204.

LIBEL.

1. An action will not lie for statements contained in an answer alleged to be libellous, if such statements were honestly made, without malice, upon probable cause, and under advice of counsel. *Lanning* v. *Christy*, 204.

2. In an action for libel where the occasion is privileged, it is for the plaintiff to establish that the statements complained of were made from an indirect motive. *Clark* v. *Molyneux*, 795.

3. In an action for libel, it is error to allow the plaintiff to offer successively in evidence, articles published in defendant's newspaper subsequent to the time of publication of the article complained of. *Scripps* v. *Reilly*, 674.

4. The burden of proving carelessness or negligence on the part of a newspaper proprietor in the selection or retention of his employees, is upon the plaintiff. *Id.*

5. Where the act done is one which, from its very nature, must be expected to result in mischief, damages are allowed for the injury to the feelings of the plaintiff, but where no element of malice or gross neglect is shown to have existed, the damage will be reduced to such sum as must inevitably have resulted from the wrong itself. *Id.*

6. An averment, in libel, that the defendant, "composed, *uttered*, wrote and sent" certain words concerning the plaintiff, sufficiently avers *publication*. *Benedict* v. *Westorer*, 739.

7. It is defamatory to call a person who has been convicted of felony "a convicted felon," if he has received a pardon or suffered his sentence. *Leyman* v. *Latimer*, 739.

LIEN. See HUSBAND AND WIFE, 31; JUDGMENT, 1; MORTGAGE, 5, 6; UNITED STATES COURTS, 4; VENDOR, 4.

1. The law in reference to the lien of laborers discussed. *Note to Herries* v. *Norvell*, 101.

2. The lien at common law of the vendor of personal property to secure the payment of purchase-money is lost by the unconditional delivery of the property to the purchaser, but this does not prevent the parties from contracting for a lien which, as between themselves, will be good after delivery. *Gregory* v. *Morris*, 601.

3. Lien laws are to be construed strictly. *Wagare* v. *Briscoe*, 740.

4. A lien for repairs is not available by third parties. *Bodine* v. *Simmons*, 795.

LIMITATIONS, STATUTE OF. See HUSBAND AND WIFE, 20.

1. Where a statute of limitations has once begun to run, no subsequent disability in the party against whom it is taking effect will arrest its operation. *Keil* v. *Healey*, 278.

2. A forcible entry of a claimant into the possession of the premises sued for does not have the effect of suspending the operation of the statute in favor of an adverse claimant. *Ferguson* v. *Bartholomew*, 495.

3. The maxim *nullum tempus occurit regi* applies to sovereignty alone, which means, in this country, the United States and the States themselves in their public capacity. *Wheeling* v. *Campbell*, 386.

4. The statute runs against a municipal corporation. *Id.*

5. A conditional promise is not sufficient to take a case out of the statute. *Goldsmith* v. *Kilbourn*, 409.

6. An act providing that, "where a party has been kept in ignorance by the fraud of the adverse party, the right to bring the suit shall be deemed to have first accrued at the time at which such fraud shall, or, with usual and ordinary diligence, might, have been known or discovered." *Held*, that it was not thereby meant that a party must commit a fraud *distinct* from the original fraud. *Wear* v. *Skinner*, 409.

7. The statute for the action to recover possession of land is not applicable to the lien of a judgment creditor on the land, though the judgment debtor may sell and convey the land with possession to the party setting up the statute. *Pratt* v. *Pratt*, 539.

8. The statute does not begin to run in such case until the land has been sold under the judgment and the purchaser becomes entitled to a deed. *Id.*

9. A credit upon an account after the cause of action on the same is barred by the Statute of Limitations, will not be treated as part payment thereof, unless shown to have been so intended by the parties. *Kaufman, Adm'r* v. *Broughton*, 675.

10. The formal language in a will requiring that all the just debts should be paid, cannot be invoked in behalf of a person who neglects the legal proof of his demand until the period of settlement has elapsed. *Collamore* v. *Wilder*, 135.

LIS PENDENS.

1. The pendency of a former action to be pleadable in abatement of a second action must be in a domestic court, that is, in a court of the state in which the second action has been brought. *Insurance Co.* v. *Harris*, 601. See UNITED STATES COURTS, 3.

2. The plea of a suit pending in equity in a foreign jurisdiction will not abate a suit at law in a domestic tribunal. *Id.*

3. All persons dealing with property are bound to take notice of a suit pending with regard to the title thereof. But this rule is not of universal application. It does not apply to negotiable securities purchased before maturity, nor to articles of ordinary commerce sold in the usual way. *Warren* v. *Marcy*, 796.

LOCAL ACTION. See JURISDICTION.

LOCAL OPTION. See CONSTITUTIONAL LAW, 18, 19.

LUNATIC. See DEED, 6; INSANITY.

1. A judgment rendered against an insane person, without the intervention of a trustee or guardian, is not void. *Johnson* v. *Pomeroy*, 540.

2. In a proceeding in aid of execution, such judgment cannot be impeached without showing some fraud on the part of the creditor in obtaining the judgment. *Id.*

MALICIOUS PROSECUTION.

1. An action on the case will lie for the malicious prosecution of a civil suit without probable cause, although there was neither an attachment nor an arrest. *Wood* v. *Finnell*, 689.

2. In such a case the fees of counsel, the expenses of witnesses, and all the reasonable expenses incurred in the defence of the malicious suit, in excess of the ordinary costs, should constitute the measure of damages. *Id.*

MALICIOUS PROSECUTION.

3. The removal from one jurisdiction to another for the avowed purpose of bringing an action in the latter forum, does not raise any presumption of a want of probable cause. *Wood* v. *Finnell*, 689.

4. Costs in malicious prosecution discussed. *Id. Note*, 693.

MANDAMUS. See JOINT DEBTORS, 3, 4; MUNICIPAL CORPORATION, 1, 5; OFFICE, 3, 4; RAILROAD, 8.

1. A private citizen has the right to compel by mandamus a performance of its duty by a public corporation. *Pumphrey* v. *Mayor*, 540.

2. Where county commissioners authorized by special act to build a bridge, for reasons in their judgment sufficient, abandoned the purpose of building the bridge, and declined to make further levies, *Held*, that they will not be compelled. *State* v. *Commissioners*, 475.

3. The court will not issue a writ against a public body when it is clearly shown that the performance of the duty is impossible, by want of funds not involving any default on the part of such body. *The Bristol and North Somerset Railway Co.*, 740.

4. A mandamus is not available to enforce contract rights of private nature. *Parrott* v. *City of Bridgeport*, 139.

5. It is granted only to prevent a failure of justice in cases where ordinary legal processes furnish no relief. *Id.*

MANSLAUGHTER. See CRIMINAL LAW, VI.

MARITIME LIEN. See ADMIRALTY, III.

MARRIAGE. See HUSBAND AND WIFE, I.

MASTER AND SERVANT. See CONTRACT, 15, 16; RAILROAD, 5, 6; SERVANT; UNITED STATES.

1. A barge of the defendant being unlawfully navigated on the river T., the plaintiff, a waterman, complained to the man in charge, who referred him to R., the defendant's foreman; the plaintiff went to the defendant's wharf in order to speak to R., and whilst he was there a bale of goods, by the negligence of the defendant's servants, fell upon him and injured him; the plaintiff had had no warning that the bale might fall. *Held*, that the plaintiff was entitled to maintain an action for the injuries sustained by him. *Corby* v. *Hill*, 66.

2. The plaintiff, a workman in the employ of a contractor engaged by the defendants, had to work in a dark tunnel rendered dangerous by the passing of trains. After he had been working a fortnight he was injured by a passing train. *Held*, that plaintiff having continued in his employment with full knowledge, could not make the defendants liable. *Woodley* v. *Railway Co.*, 67.

3. Where the incompetency of an engineer employed by the defendant was alleged to have been the cause of an injury, proof that he was afterward discharged by defendant was not competent evidence to support such allegation. *Couch* v. *Watson Coal Co.*, 541.

4. The superintendent of the company was in such case properly allowed to state whether in his opinion the engineer was competent, without previously showing himself to be an expert. *Id.*

5. Evidence of specific acts of negligence before the injury on the part of the engineer would be admissible as tending to establish the negligence of the defendant in continuing to employ him. *Id.*

6. The master is liable for an injury to a servant, resulting from the negligence of a superior servant while the latter is discharging the duties of one under his control to the same extent as if the act causing the injury had been committed by an inferior servant under his directions. *Berea Stone Co.* v. *Kraft*, 676.

7. It is the duty of employers to use ordinary care and diligence in providing sufficient and safe machinery for their employees, and if they know that machinery was defective and dangerous, and permit it to be used, they are responsible in damages, unless the defect was known by the employee. *Quaid* v. *Cornwall*, 601.

MASTER AND SERVANT.

8. If the employer had actual knowledge of the defective machinery, then he would be liable, unless he warned the employee of his danger. *Quaid* v. *Cornwall*, 601.

9. In an action against a corporation for destruction of life by wilful neglect, *Held*, that evidence conducing to show that defective machinery was in use, was not only competent, but that the jury would have been warranted in finding from such evidence alone that the killing was the result of wilful neglect. *Claxton* v. *Railroad Co.*, 602.

10. A railroad company is liable for injury to an employee caused by a defect in one of its cars, which the company, in the exercise of ordinary care, would have discovered and remedied. *Wedgewood* v. *Railway Co.*, 740.

11. If a servant, without his master's consent, engage in any employment or business for himself which may tend to injure the master's trade, he may lawfully be discharged before the expiration of the agreed term of service, even though he may so conduct such other business that it does not interfere with the business of his employer. *Dieringer* v. *Meyers*, 139.

12. A principal is liable in compensatory damages for injuries done by his servant acting within the scope of his employment; and if the act is such that the servant would be liable in punitory damages, if the action were against him, the principal is liable in damages of that character in case he authorized the act or subsequently ratified it, but not otherwise. *Bass* v. *G. & N. W. Railway Co.*, 139.

13. Plaintiff, a passenger upon a train of the defendant company, was seized by a brakeman and forcibly ejected from the car: *Held*, that the injury was one which, in an action against the brakeman, would sustain a verdict for *punitory* damages, and notice to the conductor of the train was notice to the company; and if the conductor or company disbelieves the charge against the brakeman, still the retention of the latter in its service by the company will be at its peril of the fact. *Id.*

14. The servant of the occupants of an upper tenement accidentally left open a faucet, thereby causing the water to overflow and flood the tenement below. *Held*, that the occupants of the upper tenement were liable for the damage thereby done. *Simonton* v. *Loring*, 795.

MERGER. See JUDGMENT, 10.

The assignee of a mortgage, acquiring the equity of redemption, may keep alive such mortgage as a part of his title. *Insurance Co.* v. *Meeker*, 602.

MILL. See WATERS AND WATERCOURSE, 2, 3.

MINES AND MINING.

1. A tenant for life may, when not precluded by restraining words, work open mines to exhaustion. *Westmoreland Coal Co.'s Appeal*, 741.

2. The term "mine," when applied to coal, is equivalent to a worked vein, and a tenant for life may pursue it to the boundaries of the tract. *Id.*

3. Where there are two different tracts separated by an intervening tract owned by another, with a vein extending beneath them, the opening on one tract does not extend to the other, and the tenant for life mining under the unopened one is guilty of waste. *Id.*

4. The lease of a coal mine stipulated that the lessee was to leave the mine in good working condition. *Held*, that he could not remove the supports and pillars from the mine. *Randolph* v. *Holden*, 67.

5. A contract cannot be controlled by a custom which the parties have excluded. *Id.*

MISNOMER. See AGENT, 11; CHARITY, 7.

MISTAKE. See DEED, 10–13; EQUITY, 3–6, 13, 16; MORTGAGE, 13.

MORTGAGE. See DEBTOR AND CREDITOR, 7, 8: EJECTMENT, 1; HUSBAND AND WIFE, 19: LANDLORD AND TENANT, 10; MERGER; POSSESSION, 2; RIPARIAN RIGHTS, 4; TENDER, 3; VERDICT, 3–4.

I. *Of Chattels.* See *infra*, 7, 8.

1. A mortgage of personal property to be subsequently acquired conveys no title to such property when acquired which is valid against the mortgagor

MORTGAGE.
or his voluntary assignee, unless after acquisition, possession of such property is given to the mortgagee. *Williams* v. *Briggs*, 140.

2. Where a chattel mortgage not securing negotiable paper is given for a sum named, but really to secure future advances, and none have been made, an assignee, though for value, has no rights superior to those of the mortgagee. *Judye* v. *Vogel*, 735.

3. Because a mortgagee of a chattel temporarily uses it with the assent of of the mortgagor, and then returns it to him, the mortgage lien upon it is not thereby extinguished. *Albert* v. *Lindau*, 409.

4. A chattel mortgage and a written agreement to govern the same subject matter between the parties, executed contemporaneously, must be treated as one contract. *Blakeslee* v. *Rossman*, 409.

5. Where such a contract mortgages to creditors a merchant's entire stock of goods, licensing the mortgagor to remain in possession and apply one-half of the proceeds of the sales upon his liability to the mortgagees, without making any provision for the disposition of the other half, this in effect leaves such other half at the absolute disposal of the mortgagor for his own use. *Id.*

6. A chattel mortgage permitting the mortgagor to remain in possession, and to sell and apply the proceeds or any part of them, to his own use, is fraudulent and void in law as against creditors. *Id.*

II. *Of Realty.*

7. A mortgagee of real estate whose debt is due, but who has not entered into possession, cannot maintain replevin for a specific chattel, severed and removed from the realty, subject to the mortgage. *Kircher* v. *Schalk*, 140.

8. Fixtures put in by lessees of a mortgaged building, who afterwards purchase the reversion, become subject to the mortgage if its terms are broad enough to cover them. *Jones* v. *Detroit Chair Co.*, 476.

9. A mortgage contained a stipulation that upon default, an attorney's fee of fifty dollars for foreclosure, with costs, should be taxed against the mortgagor. After suit brought, but before decree, the mortgagor paid the debt, interest and costs, and judgment for the fifty dollars attorney fee was refused. *Jennings* v. *McKay*, 140.

10. In a foreclosure the complainant cannot make a person who claims adversely to both mortgagor and mortgagee a party and litigate his rights. *Dial* v. *Reynolds*, 476.

11. In the suit of sundry mortgagees to foreclose it appeared that the wife of the mortgagor had united in the execution of only one of the mortgages. At the instance of the mortgagee holding such release the wife was made a party, and the premises were sold pursuant to an order, free from her contingent claim to dower: *Held*, that the mortgagee holding such release is entitled to priority as to the proportionate value of such inchoate dower. *Adm'r of Black* v. *Kuhlman*, 410.

12. Where, in marshalling liens, the court awards to a portion of a claim secured by mortgage, priority over a subsequent mortgage, but finds that the residue of the claim secured by the prior mortgage is fraudulent and void, as against the lien of the subsequent mortgage, the partial preference thus given to the elder lien is not necessarily erroneous. Where no positive illegality enters into the consideration of a claim, it may be valid in part, and in part invalid. *Id.*

13. Where a purchaser of land finds a mortgage satisfied of record and on the faith of that record and without actual notice of any mistake pays his money, he takes a title clear of the mortgage, although it turns out that the entry of satisfaction was a mistake which would be rectified between the parties. *Ayres* v. *Hays*, 634.

14. A conveyance to secure payment of money is a mortgage, and a power of sale contained therein must be followed strictly. *Shillaber* v. *Robinson*, 541.

15. In equity parol testimony is admissible to show that a conveyance absolute on its face was in fact a mortgage. *Risher* v. *Smith*, 796.

16. A sale under a trust deed is not affected by the voluntary absence of the debtor in the confederate states. *Martin* v. *Paxson*, 676.

MORTGAGE.

17. The mortgagor cannot maintain a writ of entry against the mortgagee without showing a satisfaction of the mortgage. *Jewett* v. *Hamlin*, 795.

18. Suing the notes secured by a mortgage, and procuring judgment upon them, without satisfaction, in no way affects the validity of the mortgage. *Id.*

19. The grantee of mortgaged premises is not liable at law to a mortgagee upon his covenant with the mortgagor to pay the mortgage debt. *Hicks* v. *McGarry*, 795.

20. A mortgagee with notice of the fraudulent discharge of a prior mortgage is not a *bona fide* purchaser. *Ins. Co.* v. *Burnstine*, 795.

MUNICIPAL BONDS. See CONSTITUTIONAL LAW, 4; CORPORATION, 27; MUNICIPAL CORPORATION, 7, 8.

1. Where to a municipal bond which has several years to run, an over-due and unpaid coupon for interest is attached, that fact does not render the bond and the subsequently maturing coupons dishonored paper, so as to subject them, in the hands of a purchaser for value, to defences good against the original holder. *Cromwell* v. *County of Sac*, 602.

2. Municipal bonds payable to bearer are negotiable instruments, and subject to the same rules as other negotiable paper. *Id.*

3. Bonds and other securities issued by municipal corporations under legislative authority, as a means of raising money on credit, by commercial usage have obtained the quality and attributes of commercial paper, in respect to their transfer. *Knapp* v. *Hoboken*, 140.

4. But ordinary corporation orders, warrants and certificates of indebtedness, are not within this principle. If negotiable in form, they are negotiable in character so far as to enable the holder to sue in his own name, but not so as to exclude inquiry into the legality of their issue, or preclude defences thereto. *Id.*

5. A municipal corporation has no power to invest its obligations with the character and incidents of commercial paper, unless such power is conferred by legislative authority, either express or clearly implied. *Id.*

6. If a municipal body has lawful power to issue bonds dependent only upon the adoption of certain preliminary proceedings, such as a popular election, the holder in good faith has a right to assume that such preliminary proceedings have taken place, if the fact be certified on the face of the bonds themselves, by the authorities whose primary duty it is to ascertain it. *County of Warren* v. *Marcy*, 796.

MUNICIPAL CORPORATION. See ACTION, 3; ASSUMPSIT, 4; CONSTITUTIONAL LAW, 20, 21; HIGHWAY, 1; JOINT DEBTORS, 2; LIMITATIONS, 4; MANDAMUS, 1–3; MUNICIPAL BONDS; RAILROAD, 12.

1. On application for a *mandamus* against the common council, they may call in question the constitutionality of an act which legislates them out of office. *The State* v. *Mayor of Newark*, 676.

2. The words "the legislature shall pass no special act conferring corporate powers," in the constitution, apply only to private, not to municipal corporations. *Id.*

3. The court, and not the legislature, is the tribunal which must determine whether an object can be accomplished by general legislation. *Id.*

4. The manner in which ward lines are run, being a matter which concerns only those within the city, affecting exclusively internal affairs, a general law must be framed to change such ward lines, special legistation being prohibited in such cases. *Id.*

5. Where the authorities of a municipal corporation are proceeding to do an act which is *ultra vires* and which will impose on a taxpayer an unlawful increase of tax, he may file a bill in equity, in his own name, to enjoin the act. *Colburn* v. *Chattanooga*, 191.

6. In such a case a court of equity has power to enjoin the issue of illegal evidences of debt by the corporate officers. *Id.*

7. Corporate powers are to be strictly construed, and unless clearly given in the charter or by statute, no authority exists in a municipal corporation to issue scrip or warrants on the treasurer, in the form of promises to pay at a

MUNICIPAL CORPORATION.
future day, for the purpose of paying the ordinary expenses of the municipality. *Colburn* v. *Chattanooga*, 191.

8. Where an ordinance of a city authorizing a contract with a gas company, and the issue to it of bonds of the city, provided that the company should "guarantee the said bonds and assume the payment of the principal thereof at maturity." *Held*, 1. That the guaranty embraced both the principal and interest of the bonds; and, 2. That the ordinance contemplated two undertakings by the company, one to the bondholder and one to the city. *Gas Light Co.* v. *Clark*, 278.

9. The duty on the part of a city opening a public street, carries with it the right to determine the grade of the street and the manner of constructing it. *Fellowes* v. *New Haven*, 141.

10. Where a city has taken land for a street and paid the damages legally assessed, it is not liable for an injury incidentally caused to the adjoining land by the grading and working of the street in a proper manner. *Id.*

11. The doctrine that a municipality cannot be held liable for the consequences of an act legally authorized, will not justify an invasion of private property. *Inman* v. *Tripp*, 141.

12. A municipal corporation is not liable for the torts of its officers committed under color of their official capacity. *Barbour* v. *Ellsworth*, 341.

13. The object of the power granted to a city to prevent obstruction to various easements of a public character is not to settle the title, which cannot be tried by a municipal court under city ordinances. *Beecher* v. *The People*, 411.

14. The purpose of alleys is not as substitutes for streets, but as a means of accommodation to a limited neighborhood for chiefly local convenience. *Id.*

15. Nothing can be treated as a punishable obstruction of an alley that does not interfere with its accustomed uses. Covering it in by a roof is not necessarily any obstruction whatever. *Id.*

16. Where the contractors in a forfeited paving contract, have left loose sand lying within the limits of the unfinished work, it is their duty to remove it, and the new contractors perform no tortious act in removing it. *Detroit* v. *Paving Co.*, 676.

MURDER. See CRIMINAL LAW, VI.

NAME. See TRADEMARK, 1–2. AGENT, 11; CHARITY, 7.

NATIONAL BANK. See TAXATION, 7, 8.

1. National banks are only exempted from state legislation so far as it may impair their efficiency to serve the government of the United States. *Thomas* v. *Farmers' Bank*, 341.

2. A set-off may be pleaded in an action brought by a receiver of an insolvent national bank. *Hade* v. *McVay*, 476.

3. Where usurious interest is charged on a note or bill discounted by a national bank, the entire interest will, in an action on the note or bill, be adjudged forfeited. *Id.*

4. The action authorized by sect. 30 of the National Banking Act of 1864, to recover from the bank twice the amount of usurious interest paid, was within the jurisdiction of the state courts. *Id.*

NAVIGABLE STREAM. See RIPARIAN RIGHTS.

NEGLIGENCE. See LANDLORD AND TENANT, 2; MASTER AND SERVANT; RAILROAD, 1–5; TELEGRAPH, 4.

1. A contractor is not liable for the consequences of the negligence of his sub-contractor. *Bridges* v. *Railway Co.*, 205.

2. The owner of a horse, lent without hire, is responsible for the negligence of the borrower. *Forks Township* v. *King*, 205.

3. F. approached a railroad crossing with which he was perfectly familiar, and with a manageable team. He drove by an open space, through which he had an extended view of the railroad, and stopped directly in front of a watch-house of the railroad, which intercepted his view in the same direction. In this position he stood still for an instant, turning his head around as if look-

NEGLIGENCE.
ing for the train, and then whipped up his team to cross the track, and colliding with a passing train was killed. He was partially deaf, but did not leave the wagon to look past the watch-house. *Held*, that he was guilty of contributory negligence, and the court should have instructed the jury that no damages could be recovered for his death. *Railroad Co.* v. *Feller*, 205.

4. The neglect of a railroad train to sound its whistle or ring its bell on approaching a street crossing, does not relieve a party from the necessity to use his senses—to listen and to look—before attempting to cross the railroad track. *Railroad Co.* v. *Houston*, 278.

5. In order to maintain an action against a railroad company for injuries received, it must be proved that the injury was caused by the negligence of the defendant or its agents; and it must not appear from the evidence that want of ordinary care and prudence on the part of the person injured directly contributed to the injury. *State* v. *Railroad Co.*, 542.

6. Negligence cannot be imputed to the company merely from the fact that a train may be behind the usual time. *Id.*

7. The *onus probandi* as to negligence is on the plaintiff, as it is the ground of his action. *Id.*

8. The fact of negligence is for the jury to decide where there is evidence legally sufficient to prove it, but in the absence of such evidence, it is the duty of the court to withhold the case from the jury. *Id.*

9. The doctrine of imputed negligence does not prevail in Ohio, and a child of tender years, injured by the fault of another, is not deprived of a right of action by reason of contributory negligence on the part of a parent or guardian. *Railroad Co.* v. *Manson*, 604.

10. For a traveller upon a railroad train to pass from one car to another while the train is in motion, may generally be considered an act of negligence, but when a party, acting under a suggestion from the conductor, attempts to pass from car to car, and is injured, he will not be debarred his right of recovery, merely because he undertook to comply with the conductor's suggestion, and it is the province of the jury to determine both the nature and effect of the conductor's remarks. *Id.*

11. The storage by a warehouseman of gunpowder in large quantities in the same room with other goods liable to be ignited by a fire or explosion of the powder, is negligence in itself, and where the fact is undisputed the court may pronounce it negligence as matter of law. *White* v. *Railroad Co.*, 783.

12. A railroad company or other common carrier keeping goods in its own warehouse until called for, is a bailee for hire, and liable as a warehouseman under the above rule. *Id.*

13. Negligence may be the proximate cause of injury, although it is not the sole or even the immediate cause. *Id.*

14. In an action for a personal injury against owners of an unenclosed lot of ground within the limits of the city of Baltimore, upon which was a deep excavation, left in a dangerous condition: *Held*, that the fact that persons were in the habit of passing over the lot gave the plaintiff no right to do so. 2d. That a party has the right to use his land as he pleases, except as he may be restrained by duty to the public or to private individuals. *Maenner* v. *Carroll*, 411.

NEGOTIABLE SECURITIES. See BILLS AND NOTES; MUNICIPAL BONDS, 2, 3.

NEW TRIAL. See ERRORS AND APPEALS, 1; JURY, 5; VERDICT, 1.

NOTICE. See ASSIGNMENT, 1; ATTORNEY, 7; BAILMENT, 1; BOND, 1; COMMON CARRIER, 14; LANDLORD AND TENANT, 7–8; MASTER AND SERVANT, 13; SURETY, 3; VENDOR, 2.

Record evidence of a conveyance operates as notice, and actual, visible and open possession is equivalent to registry. *Noyes* v. *Hall*, 478.

NUISANCE. See LANDLORD AND TENANT, 2.

The claim alleged that the surface of the defendant's land had been artificially raised by earth placed thereon, and that in consequence rain-water falling on the defendant's land made its way through the defendant's wall

NUISANCE.
into the adjoining house of the plaintiff, and caused substantial damage, *Held*, a good cause of action. *Hurdman* v. *Railway Co.*, 797.

OFFICE AND OFFICER. See ATTACHMENT, 2; ATTORNEY, 6; CRIMINAL LAW, 10; DEED, 5; MUNICIPAL CORPORATION, 12; STATUTE, 4; UNITED STATES.

1. Individuals as well as courts must take notice of the extent of the authority conferred by law upon a person acting in an official capacity. *Hawkins* v. *United States*, 68.

2. The government is not bound by the acts of its agents unless it manifestly appears that the agent was acting within the scope of his authority, or that he had been held out as having such authority. *Id.*

3. An office is not vacant when there is a *de facto* incumbent. *Harrison* v. *Simonds*, 279.

4. Such incumbent must be ousted upon an information in the nature of a *quo warranto*, before the court will grant a mandamus to compel proceedings for filling the office. *Id.*

5. All the country described by the Act of June 30th 1834, as Indian country, remains Indian country so long as the Indians retain their title to the soil, in the absence of any different provision by treaty or by act of Congress. *Bates* v. *Clark*, 279.

6. A military officer seizing liquors supposed to be in Indian country when they are not, is liable to an action as a trespasser. *Id.*

7. The difference between the value of the goods so seized, at the place where they were taken and the place where they were returned to the owners, is the proper measure of damages, *Id.*

8. The rule that a public office is a public trust, and that all agreements by a person holding such a station to control the business of the government for a pecuniary consideration to himself, are void as against public policy, is not a local rule or peculiar to the law of this country, but a principle of morality and of public policy enforced in all countries having an organized system of law. *Oscanyan* v. *Arms Co.*, 626.

9. Such an agreement will not be enforced in the courts of this country though the plaintiff relying on it is only an officer of a foreign government, as to the law of which in regard to such matters there is no evidence. *Id.*

ORDINANCE. See ACTION, 3; MUNICIPAL CORPORATION, 13.

PARDON. See CONFISCATION.

A pardon takes effect and is irrevocable when it has been signed by the executive, properly attested, authenticated by the seal of the state, and delivered either to the recipient, or to some one acting for him, or on his behalf. *Ex parte Reno*, 677.

PARENT AND CHILD.

There must be an express promise, or circumstances from which a promise by the father can be inferred, to hold him liable for necessaries furnished his infant child. *Murphy* v. *Ottenheimer*, 342.

PARTNERSHIP. See BILLS AND NOTES, 8; CRIMINAL LAW, 28.

1. Sharing profits is sufficient to constitute one a partner. *Lager* v. *Tupper*, 478.

2. Agreement between A. and B. by which A. agreed to build five houses for B. at actual cost, to be completed, &c., and the houses and the lots whereon they were built to be sold, and the proceeds of the sale to be divided between A. and B.: *Held*, that if this agreement could be construed as a partnership at all, it was one for disposing of the houses and land, not for building them. *Bisbee* v. *Taft*, 205.

3. The interest of all the partners in the partnership property may be sold under an execution upon a judgment confessed by a single partner, in the firm name and for a firm debt. *Ross* v. *Howell*, 205.

4. One partner has no claim against another before a final settlement. But such defence may be waived by going to trial without objection. *Tolford* v. *Tolford*, 742.

ARTNERSHIP.

5. An incoming partner may undoubtedly by agreement become liable for debts contracted by the firm previous to his entering it, but the presumption of law is against any such liability. *Kountz* v. *Holthouse*, 742.

6. A retiring partner remains liable for all the existing debts of the firm, to the same extent as if he had not retired. *Rawson* v. *Taylor*, 412.

7. The sole survivor of a firm may assign a promissory note payable to the late firm by endorsement. *Johnson* v. *Berlizheimer*, 343.

8. After the dissolution of a firm by the death of a partner, one surviving partner has no implied power to bind another by a note given in the name of the late firm, even for an acknowledged indebtedness accruing before the firm's dissolution. *Matteson* v. *Nathanson*, 412.

9. The legal title to the realty or personalty of a firm is held by the heirs of a deceased partner, as trustees, for the equitable purposes of the firm. *Merritt* v. *Dickey*, 478.

10. The surviving partner of a firm is entitled to the possession of the partnership assets, and cannot be dispossessed except for misconduct. *Id.*

11. A partner's death dissolves the firm, and a court of equity has no power to enforce a partnership agreement after such dissolution of the firm by the partner's death. *Roberts* v. *Kelsey*, 797.

12. Where an agent of a firm, with the assent of one partner, assigned a demand due the firm, to apply on a debt against himself and the assenting partner: *Held*, that the person owing the demand could not contest the validity of the assignment without producing evidence that the other partners did not acquiesce in the transfer. *Kuhl* v. *Thompson*, 797.

13. An indebtedness to be available as set-off against the assignee of a demand, must have accrued before the assignment. *Id.*

PASSENGER. See COMMON CARRIER, 1-3; NEGLIGENCE, 9, 10; RAILROAD, 2, 9-11.

PATENT. See BILLS AND NOTES, 2.

1. Patentees or assignees in a suit for infringement, where the patent described in the bill of complaint is introduced in evidence, are presumed to be the original and first inventors of the described improvement. *Roemer* v. *Simon*, 68.

2. A licensee to use a patent having knowledge that the patentee's right is in litigation, but the licensee not having been interfered with, cannot plead that the invention was not new nor that the patentee was not the first inventor. *Jones* v. *Burnham*, 235.

3. A mere variation in the form or shape of the instrument cannot be successfully used to evade the monopoly. But where form is of the essence of the invention it is necessarily material, and if the same object can be attained by a machine different in form where that form is inseparable from the successful operation of the instrument, there is no infringement. *Werner* v. *King*, 343.

4. It is necessary to an infringement that the arrangement which infringes should perform the same service in substantially the same way. *Id.*

5. The interest in a patent to the transfer of which writing is necessary, under sect. 11 of the Act of 1836, is an interest in the legal title of the patent. An equitable interest or an interest in the proceeds need not be in writing. *Blakeney* v. *Goode*, 413.

6. Although a cause of action may relate to the subject-matter of a patent right, it is within the jurisdiction of state courts, if it does not involve the validity of the patent right. *Id.*

7. Rights secured to an inventor by letters patent are property which consists in the exclusive privilege of making and using the invention and of vending the same to others to be used for the period prescribed by the patent act. *Paper-bag Machine Co.* v. *Murphy*, 798.

8. Devices in a patented machine are different in the sense of the patent law when they perform different functions or in a different way, or produce a substantially different result. *Id.*

9. A reissued patent must be for the same invention as the original patent. *Marsh* v. *Seymour*, 798.

PAYMENT. See DEBTOR AND CREDITOR, 15; LIMITATIONS, 9.
Payment is a question of fact. *Sly* v. *Freeman*, 798.

PERJURY. See CRIMINAL LAW, VII.

PERPETUITY. See CHARITY, 5.

PLEADING. See ACTION, 8-11; CRIMINAL LAW, 7-13, 29, 34; GUARANTY, 2; LIBEL, 6; TROVER, 1.

1. The decision of the court upon the issues of fact are conclusive on a bill of review. *Buffington* v. *Harvey*, 69.

2. A general demurrer must be overruled if the pleading demurred to contain any good ground to support it. *Id.*

3. The granting of a rehearing is always in the sound discretion of the court, and furnishes no ground of appeal. *Id.*

4. The replication must support and fortify the declaration. The plaintiff, where an evasive plea is filed, may restate his cause with more particularity, but he must not depart from any material allegation in the declaration. *Bank* v. *Hendrickson*, 678.

5. A departure in pleading is a fault in substance, and may be taken advantage of by general demurrer. *Id.*

6. An argumentative plea is good on general demurrer. An objection of that kind could formerly be taken advantage of only by special demurrer, and is now available only by a motion to strike out. *Id.*

7. The rule that judgment on demurrer will be given against the party whose pleading is first defective, applies only when the defect in the prior pleading is in a matter of substance, such as would be available on general demurrer. *Id.*

8. In a case where malice is the gravamen of the action, the petition will be held bad on demurrer, if the facts as detailed in it show that there was no malice, notwithstanding it contains a general charge that defendant's acts were wilful, malicious and oppressive. *Dritt* v. *Snodgrass*, 679.

9. The cause of action is determinable by the declaration. *Haley* v. *Hobson*, 791.

10. A bill of particulars is not objectionable as introducing a new cause of action, even though the plaintiff had no such cause in his mind as the bill states when he commenced the action. *Id.*

11. In pleading a foreign statute, it must be set forth in substance. The averment, "pursuant to the statute," without setting forth the substance of the statute, is insufficient. *Salt Lake Nat. Bank* v. *Hendrickson*, 671.

POISONS, THE POST MORTEM IMBIBITION OF, 145.

POSSESSION. See BAILMENT, 4; VENDOR, 2.

1. Under a writ of possession the plaintiff must be so established in his possession by the officer that any person entering upon him will be indictable for a forcible entry. *Inhabitants of Union* v. *Bayliss*, 678.

2. Where C. was in possession of land under a parol contract of sale, and M. took from C.'s vendor a mortgage of the land, with knowledge of C.'s possession, but in ignorance of his rights as purchaser, the mortgage was void as against C. *Cunningham* v. *Brown*, 742.

3. If two coterminous proprietors establish a dividing line between their premises, and actually claim and occupy the land on each side of that line, continuously, for twenty years, such possession is *adverse*, and confers title by prescription. *Bader* v. *Zeise*, 742.

4. In ejectment, where there was a road along and over the land, and the parties had built fences, each on that side on which his land lay, *Held*, that if the centre of the road was agreed upon as the true boundary, and each party had claimed and occupied up to the fence maintained by him, for twenty years, he was precluded from claiming a different boundary. *Id.*

POST OFFICES AND POST ROADS. See CONSTITUTIONAL LAW, 1-3.

POWER.

A testatrix bequeathed a fund to her daughter for life, and after her death amongst the other children of the testatrix, or their issue, in such parts as her

POWER.
said daughter should by deed or will appoint. *Held*, that the daughter's power was exclusive and not distributive merely. *In re Veal's Trusts*, 206.

PRESS. See CONSTITUTIONAL LAW, 2, 3.

PRESUMPTION. See EVIDENCE, 14; PARTNERSHIP, 5.
Where several persons lose their lives by the same event, there is no presumption of law as to survivorship based upon age or sex, nor is there any presumption that they all died at the same moment.. The law makes no presumption, but leaves the survivorship to be determined by the evidence. *Newell* v. *Ridgway*, 249.

PROHIBITION. See ADMIRALTY, 8.

PROSECUTING ATTORNEY. See BILLS AND NOTES, 1; CONTRACT, 7; CRIMINAL LAW, 5, 6; WITNESS, 3.

PUBLIC POLICY. See CONTRACT, 6; OFFICER, 8, 9.

PUBLIC SCHOOLS.
A school law, providing that the board of directors "shall have power to make and enforce all needful rules and regulations for the government, management and control of such schools and property as they shall think proper" * * * A board of directors made a rule that no pupil should, during the school term, attend a social party. Plaintiff, a pupil of the school, by the permission of his parents, violated the rule, and was expelled from the school for so doing. In an action against the directors to recover damages for the expulsion; *Held*, 1. That under the law, they had no power to follow the pupils home and govern their conduct while under the parental eye; but 2. As there was no malice, oppression or wilfulness on the part of the directors, they were not liable in damages. *Dritt* v. *Snodgrass*, 679.

QUARANTINE LAWS. See CONSTITUTIONAL LAW, 15–17.

QUO WARRANTO. See OFFICER, 3–4.

RAILROAD. See BAILMENT, 1; COMMON CARRIER; CORPORATION, 9; HIGHWAY, 2; MASTER AND SERVANT, 9–13; NEGLIGENCE, 3–12; RECEIVER, 1.
1. While unusual speed of railway trains does not of itself constitute negligence, yet it may be considered with other circumstances in determining the degree of care exercised. *Artz* v. *Railroad Co.*, 69.
2. A railway company is liable for the malicious and criminal acts of their employees toward passengers. *McKinley* v. *Railroad Co.*, 69.
3. If a railroad crosses a common road on the same level, those travelling on either have a legal right to pass over the point of crossing, and to require due care on the part of those travelling on the other to avoid a collision. *Continental Improvement Co.* v. *Stead*, 142.
4. It is the duty of the wagon to wait for the train. The train has the preference and right of way. But it is bound to give due warning of its approach, so that the wagon may stop and allow it to pass. *Id.*
5. There is no legal obligation on the part of a railroad company to build its bridges under public roads with an elevation so great that one of its employees standing upright on the top of a car will not be endangered. *Baylor* v. *Railroad Co.*, 604.
6. It is the duty of railroad companies to furnish safe machinery. *Railway Co.* v. *Asbury*, 280.
7. Where a railroad company constructs and operates its road over its line, under its charter, it cannot thereafter abandon the same, even though its charter was merely permissive and not mandatory. *Trust Co.* v. *Henning*, 266.
8. Where Congress donates lands to a state to aid in building railroads, there is a beneficial interest therein, vested in the state, and where such lands are granted to a railroad company, by the state, in consideration that the company shall build its road, and such grant is duly accepted, a valid contract is created, which is obligatory on the company, to *complete* its road; and compliance with such charter duty, and contract obligation, can be enforced by mandamus. *Id.*

RAILROAD.

9. A railroad company is not obliged to carry as baggage the trunk of one who does not go by the same train. Upon receiving the trunk of such person to be forwarded it is received as freight, and the duties and liabilities of a common carrier attach, with the right to a reasonable compensation for transportation. *Graffan* v. *Railroad Co.*, 343.

10. Delivery to the passenger terminates a railroad company's liability for a passenger's luggage. *Patscheider* v. *Railway Co.*, 799.

11. A railway company are not insurers in respect of luggage placed at a passenger's request in the same compartment in which he intends to travel. *Bergheim* v. *Railway Co.*, 799.

12. A city may permit a city railway track to be laid in its streets, without consulting or compensating the abutting proprietors who may own the soil of the street. But the owner of the land is entitled to compensation for the new burden imposed on his estate. *Railroad Co.* v. *Heisel*, 478; *Railroad Co.* v. *Esterle*, 606.

13. The decrease in rental and market value of his lot are proper items of damage, and so are the annoyances to business or family occupation caused by the operation of the railroad. *Id.*

14. But if the abutting owner does not own the soil of the street, the mere laying of the track in the street is no legal injury. *Id.*

RAPE. See CRIMINAL LAW, VIII.

REAL ESTATE. See TENEMENT.

RECEIVER. See NATIONAL BANK, 2.

1. The court will authorize a receiver of a railroad company to make all necessary repairs, and, if necessary, will charge the expense as a first lien on the property. *Hoover* v. *Railway Co.*, 534.

2. An officer of a corporation, under whose management it has become insolvent, is not a proper person to be appointed its receiver. *McCullough* v. *Loan and Trust Co.*, 534.

RECORD. See NOTICE.

RECOUPMENT.

There can be no recoupment in a suit on a sealed instrument. *Price's Executors* v. *Reynolds*, 142.

REHEARING. See FORMER ADJUDICATION, 5; PLEADING, 1–3.

REMOVAL OF CAUSES.

1. Where the jurisdiction of the courts of the United States depends upon the citizenship of the parties, it has reference to the parties as persons. A petition for removal must, therefore, state the personal citizenship of the parties and not their official citizenship, if there can be such a thing. *Amory* v. *Amory*, 142.

2. A petition for removal therefore, setting forth "that said plaintiffs, *as such executors*, are citizens of the state of New York," is insufficient. *Id.*

3. The citizenship of the parties upon which the right of removal depends means the citizenship of the parties at the time of the *commencement* of the suit. *Phœnix Ins. Co.* v. *Pechner*, 142.

4. The legislation of March 3d, 1875, in reference to the removal of causes, did not repeal the second and third subdivisions of section 639 of the Revised Statutes of the United States. *The New Jersey Zinc Co.*, v. *Trotter*, 376.

REPLEVIN. See USURY, 2.

1. A sheriff who seizes the personal property of A. on an attachment against the property of B., and after sale delivers the actual possession to the purchaser, is not a proper party defendant in replevin to recover the property and damages for its detention. *Moses* v. *Morris*, 742.

2. Where the plaintiff's goods have been commingled with like goods of the defendants by the wrongful act of a third party, replevin will nevertheless lie therefor. *Wilkinson* v. *Stewart*, 742.

RESCISSION. See CONTRACT, 5, 11; EQUITY, 8; SALE, 4, 6, 12–15.

RIPARIAN RIGHTS. See WATERS AND WATERCOURSES.

1. A riparian owner has a right to moor a vessel of ordinary size alongside his wharf for the purpose of loading or unloading, at reasonable times and for a reasonable time; and the court will restrain by injunction the owner of adjoining premises from interfering with the access of such vessel. *Collieries Co.* v. *Gibb*, 206.

2. The grant of a franchise (as to maintain a boom in a river, within certain limits) cannot license a trespass by the grantee on lands of other persons. *Boom Co.* v. *Reilly*, 679.

3. The purchaser of a trespasser's possession takes no right which the trespasser had not. *Id.*

4. The franchise to maintain a boom in a navigable river within certain limits does not pass by a mortgage, by the grantee of the franchise, of land within those limits of which he had no title. *Id.*

5. Riparian owners on the banks of streams in Wisconsin which are navigable for the purpose of floating logs to market, may lawfully, until prohibited by statute, construct in front of their land proper booms to aid in floating logs. *Id.*

SALE. See EVIDENCE, 4, 5; MORTGAGE, 14–16; VENDOR.

1. The property in a chattel passes according to the intention of the parties. *Hires* v. *Hurff*, 11.

2. Where there is a contract for the sale of a smaller quantity of goods from a greater mass of like quality (corn), which remains in the possession of the seller, without selection or appropriation, the contract is executory, and the property does not pass, unless there be a clearly expressed intention to make the sale complete without further action by the parties. *Id.*

3. The conditions necessary to a completed sale discussed. *Id.*, *Note.*

4. A party has no power to rescind a contract of purchase unless there is a provision in it giving him the right to do so. *Buckingham* v. *Osborne*, 143.

5. Where a contract of sale of personal property is inoperative under the Statute of Frauds for want of delivery, a tender made afterwards, and an unconditional acceptance, have the same effect between the parties as if the delivery had been made at the time of the sale. *Id.*

6. Where goods are obtained by means of a fraudulent purchase, the vendor has a right to disaffirm the contract, so as to revest the property in himself and to recover its value in an action of tort against the vendee. *Dellone* v. *Hull*, 542.

7. It is not necessary that a contract of sale should determine the price in the first instance: it may appoint a way by which it shall be thereafter determined. *Cunningham* v. *Brown*, 679.

8. Where, therefore, a contract for the sale of a village lot provided that the price should be the same as the price of sale of the first lot which should be sold in the vicinity, and lots adjoining the one in question were sold before the action was commenced: *Held*, that the contract was thus rendered certain. *Id.*

9. Time is usually of the essence of an executory contract for the sale and subsequent delivery of goods, where no right of property in the same passes by the bargain from the vendor to the purchaser. *Jones* v. *United States*, 500.

10. Where a contract is made to sell or furnish certain goods identified by reference to independent circumstances, such as an entire lot deposited in a certain warehouse, or all that may be manufactured by the vendor in a certain establishment, or that may be shipped by his agent or correspondent, and the quantity is named with the qualification of "about" or "more or less," or words of like import; the contract applies to the specific lot, and the naming of the quantity is not regarded as in the nature of a warranty. *Brawley* v. *United States*, 402.

11. But when no such independent circumstances are referred to, and the engagement is to furnish goods of a certain quality or character to a certain amount, the quantity specified is material and governs the contract. *Id.*

SALE.

12. To constitute a rescission of a contract of sale for breach of warranty, the vendee's offer to return the property should be unconditional, and should assign the breach of warranty as the ground thereof. *Churchill* v. *Price*, 736.

13. It is generally a question of fact for the jury, whether an offer to return goods sold, and rescind the contract, is made *within a reasonable time*. *Id.*

14. A continued use of the whole or a part of the property sold, after an alleged offer to rescind, is inconsistent with the claim to have rescinded, or at least strong evidence against it. *Id.*

15. A vendor impliedly warrants goods sold by him without any opportunity of inspection on the part of the buyer to be of a merchantable quality, and if when the goods are delivered to the buyer they are unmerchantable, the buyer may return them without unnecessary delay and rescind the contract; and if the goods on being returned to the vendor are injured without any fault on the part of the buyer, such injury does not prevent a rescission of the contract. *Bigger* v. *Bovard*, 743.

16. Where one sends for sale to a public market pigs which he knows to be infected with a contagious disease, but sells them expressly without warranty it does not amount to a representation that they were free from disease. *Ward* v. *Hobbs*, 799.

SALVAGE. See ADMIRALTY, IV.

SAVINGS BANK.

A savings bank is an institution in the hands of disinterested persons, the profits of which inure wholly to the benefit of the depositors, in dividends. *Huntington* v. *National Savings Bank*, 605.

SEARCHES AND SEIZURES. See CONSTITUTIONAL LAW, 2, 3.

SERVANT. See MASTER AND SERVANT.

1. A reporter and a city editor of a newspaper are laborers or servants within the meaning of a statute making stockholders personally liable for the services of laborers and servants of the corporation. *Herries* v. *Norvill*, 97.

2. The test as to who shall be deemed a laborer or servant within such a statute, cannot be limited to manual labor only, but must vary according to the nature of the services in relation to the business. *Id.*

SET-OFF. See ACTION, 6; NATIONAL BANK, 2

The right of set-off in an action is governed by the law of the place where the action is brought. *Bank* v. *Hemingray*, 479.

SHERIFF AND SHERIFF'S SALE. See ATTACHMENT, 2; JUDGMENT, 7.

1. A sheriff who owns stock in a corporation, has no such interest as will disqualify him from executing process in a case to which the corporation is a party. *Hardwick* v. *Jones*, 280.

2. A purchase by a corporation at execution sale is not void because the sheriff conducting the sale is at the time a stockholder in the corporation. *Id.*

3. There is no implied warranty of title by a sheriff on a sale of property under execution, but when he has information of an adverse claim, or such information as would put one of ordinary prudence on inquiry in regard to title, then it is his duty to take a bond of indemnity, which would protect the owner and purchaser, or his duty at least to inform the bidders of the adverse claim, and a failure to do one or the other would render him liable to the purchaser. *Harrison* v. *Swanks*, 605.

SHIPPING. See ADMIRALTY.

1. A description in a charter-party that a vessel is of a particular class is not a continuing warranty. *French* v. *Newgass*, 800.

2. The implied warranty of seaworthiness into which the owner of a ship enters with the owner of her cargo, attaches at the time when the perils of the intended voyage commence; that is, when she sets sail with the cargo on board for her port of destination. *Cohen* v. *Davidson*, 70.

3 A clause in a bill of lading exempting from responsibility for "leakage" does not extend to damage caused by oil escaping from barrels. *Thrift* v. *Youle*, 71.

SHIPPING.

4. Shipowners are in no case liable for any loss occasioned by collision beyond the amount of their interest in the colliding ship and her freight pending, except for costs and interest by the way of damages in case of default of payment and suit to recover the amount. *Sparrow* v. *Avery*, 206.

5. Nor are the stipulators, either for cost or value, ever liable for any default of their principal beyond the amount specified in the stipulation which they gave, except for costs and interest by the way of damages in case of their own default to make payment pursuant to the terms of the stipulation. *Id.*

6. A cargo was shipped on board the plaintiff's ship under bills of lading, which contained the following clause: "Three working days to discharge the whole cargo, or 30*l.* per day demurrage." The defendants, the endorsees of the bills of lading, were prevented from completely unloading their portion of the cargo within the lay days, because it lay at the bottom of the hold: *Held*, that the defendants were liable for demurrage. *Straker* v. *Kidd*, 605; *Porteus* v. *Watney*, 605.

SLANDER.

1. In an action for charging plaintiff with having burned his property to defraud the insurers, proof of actual insurance is immaterial. *Fowler* v. *Gilbert*, 413.

2. Charges made to plaintiff himself of the same slanderous nature as those counted on, are admissible in evidence in aggravation of damages. *Id.*

3. Alleged frauds of plaintiff against third parties concerning agreements regarding insurance, are irrelevant. *Id.*

4. The opinion entertained by a public officer as to the cause of a fire, is inadmissible. *Id.*

5. B. sued M. for charging him with perjury in an action pending before a justice, to which action M. was a party, giving at length the words used. M. confessed the speaking of the words and pleaded in avoidance, that he managed his own case before the justice, and that all he said was addressed to the court in attempting to sustain his case, and for no other purpose, and was not in excess of his lawful right to indulge in fair criticism. *Held*, that the jury should have been instructed to find for the defendant if the words spoken by him were pertinent and material to the question in controversy in the action before the justice. *Morgan* v. *Booth*, 543.

6. Words not actionable *per se*, spoken of the chastity of a woman, may be shown to have been spoken in an actionable sense. *Emmerson* v. *Marvel*, 71.

7. That words, actionable *per se*, were spoken in the hearing of a third person need not be alleged in the complaint, but must be proved on the trial, in an action for slander. *Id.*

SPECIFIC PERFORMANCE. See EQUITY, 6; TRUST, 4.

1. If one party be incapable of performance he cannot enforce it upon the other. *Luse* v. *Deitz*, 543.

2. Where application for the specific performance of a contract for the purchase of land is made by the purchaser, courts of equity require that the terms of the contract shall be fully stated, so that it may appear to the court to possess all the elements of fairness, mutuality and certainty in all its parts. *Bridge Co.* v. *Bannon*, 543.

3. But such strictness is not required as to the averments in the bill where the complainants are strangers to the contract, and have not full and particular knowledge of its terms. *Id.*

STATUTE. See ACTION, 1; CONSTITUTIONAL LAW, 22; HUSBAND AND WIFE, 12, 13; MUNICIPAL CORPORATION, 2–4.

1. When a statute creates a new right or liability, and at the same time gives a remedy, the remedy given is exclusive. *Inman* v. *Tripp*, 143.

2. To save pending actions for statutory penalties, or pending prosecutions for statutory offences, upon the repeal of the statute, an express saving of all penalties incurred or offences committed under it, whether in the course of prosecution or not, is essential. *Rood* v. *Railway Co.*, 280.

STATUTE.

3. The re-enactment of a statute after a judicial construction of its meaning, is a legislative adoption of the statute as thus construed. *Tuxbury's Appeal*, 343.

4. Statutes directing the mode of procedure of public officers where there are no negative words restricting the action are directory. *Parish* v. *Elwell*, 543.

5. The constitutional amendment that prohibits the enactment of special and local laws in certain cases, applies to laws regulating the internal affairs of cities, as well as those of counties. *State* v. *Parsons*, 606.

6. A law, framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, is not a special or local law, but a general law. *Id.*

7. An act which, by its terms, is a supplement to a city charter, and designed to regulate the internal affairs of such city, is a local act. *State* v. *Camden*, 606.

8. The publication of an act in the bound volumes of session laws of the year in which it purports to have been approved, verified by the secretary of state, creates a presumption that it became a law pursuant to the requirements of the constitution. *Bound* v. *Railroad Co.*, 743.

STREET. See MUNICIPAL CORPORATION, 9–11, 14, 15; RAILROAD, 12-14.

SUCCESSION TAX. See TAX.

SUNDAY.

1. A statute being in force that every person who shall do any labor or business, or work of his ordinary calling on the first day of the week, works of necessity and charity only excepted, shall be fined, S., a livery stable keeper, let, in his ordinary business, a horse and carriage to be driven for pleasure to a particular place. The hirer drove them to a different place and returned them damaged; whereupon S. brought trover against the hirer: *Held*, that the action would not lie. *Smith* v. *Rollins*, 143.

2. SUNDAY CONTRACTS, WHEN VOID AND WHEN BINDING, 281.

SURETY. See HUSBAND AND WIFE, 35; INFANT, 3.

1. Release by a creditor of part of the land mortgaged to him as security for payment of a bond, does not discharge a surety in the bond if the remainder of the land is sufficient to indemnify him against loss. *Saline County* v. *Bine*, 280.

2. In an action against a surety, the record of a judgment against his principal, unless shown to be on account of matters connected with his guaranty, is inadmissible. *Roberts* v. *Mattress Co.*, 413.

3. Where a party has given a bond to another to secure the faithful performance of the contract of a third person, it is the duty of the obligee to give reasonable notice to the guarantor of any defalcation on the part of the contractor. *Id.*

4. Where a guaranty is subsequent to the contract between the principal and the guarantee, and forms no part of the consideration thereof, it requires a distinct consideration to give it efficacy as a collateral undertaking. *Id.*

5. But where a guaranty expressly referred to a previous agreement between the principal and the guarantee, which was executory in its character, and embraced prospective dealings between the parties, then the guaranty purports upon its face and by necessary construction a sufficient consideration. *Id.*

6. A *bona fide* purchaser of a debtor's land from a fraudulent vendee, without notice of the fraud, acquires an equity superior to that of a creditor. *Bank* v. *Teeters*, 479.

7. A surety of the debtor, who takes a mortgage for his indemnity as such surety, is to be regarded in equity as a *bona fide* purchaser, within this rule, and will be protected to the extent of his liability as surety. *Id.*

8. It is no defence for the surety on a bail-bond that his principal has been arrested and is being detained by the United States on a charge against him. *Commonwealth* v. *House*, 544.

TAX AND TAXATION.

1. The constitutional provision that no state shall deprive any person of life, liberty or property without due process of law, does not require that persons taxed by the law of the state shall be present, or have an opportunity to be present, when the tax is assessed against them. *McMillen* v. *Anderson*, 143.

2. Nor does it require that taxes shall be collected by a judicial proceeding. *Id.*

3. A statute which gives the taxpayer a right to enjoin its collection, and have the validity of the tax decided by a court of justice, is due process of law. *Id.*

4. A purchaser of land, upon the descent of which a succession tax is due under the Act of Congress incurs no personal liability to pay it. *Wilhelm* v. *Wade*, 343.

5. No one can be made liable for the payment of a share of the succession tax due on the descent of a tract of land greater than his share in the land. *Id.*

6. The Act of Congress does not authorize a sheriff, who has sold land and collected the proceeds under an order of court in a partition suit, to pay the succession tax due upon the descent of the land. *Id.*

7. The rate of taxation upon the shares of a National Bank should be the same or not greater than upon the moneyed capital of the individual citizen which is liable to taxation. *Adams* v. *Nashville*, 206.

8. The discretionary power of the legislature of the states over all these subjects remains as it was before the Act of Congress of June 1864. The plain intention of that statute was, to protect the corporations formed under its authority from an unfriendly discrimination against them of the power of state taxation. That particular persons or particular articles are relieved from taxation is not a matter to which either class can object, *Id.*

TELEGRAPH.

1. In case of a breach of contract, actual damages not being proved, nominal damages may be recovered. *Bank* v. *Telegraph Co.*, 606.

2. In case of failure to deliver a telegraphic message, the company is only liable for such damages as naturally flow from the breach of contract. *Id.*

3. If the telegraph company's default is made mischievous to a plaintiff only by the dishonesty of a third person, the company cannot be made responsible. *Id.*

4. A telegraph company delivered to the plaintiffs a message which was not intended for them. The plaintiffs, who reasonably supposed that the message came from their agents and was intended for them, acted upon it and thereby incurred a loss : *Held*, that the plaintiffs could not recover. *Dickson* v. *Telegraph Co.*, 222.

TENANT FOR LIFE. See MINES AND MINING, 1–3.

Tenant for life is bound to keep up improvements, unless destroyed by act of God ; but when they are so destroyed he has no right to cut timber to replace them. *Miller* v. *Shields*, 71.

TENDER. See SALE, 5.

1. THE REQUISITES OF A VALID TENDER, 745.

2. Where mutual acts are to be done by two parties at the same time, and the right of each depends upon the performance of the other, either may tender performance of his part on condition of the simultaneous performance of the other's part, and such tender will be good. But when one party is bound to perform an act not dependent on any act of the other, a tender to be valid must be without conditions. *Story* v. *Krewson*, 56.

3. A tender of the amount due upon a promissory note payable at a bank, made upon the condition that such note shall be surrendered, is sufficient, but if the note be secured by a mortgage on real estate, a tender of the amount upon the condition that such mortgage shall be released or cancelled, is insufficient. *Id.*

TENEMENT.

There may be several and distinct tenements in the same building, under the same roof, as well where one is *over* the other, as where one is *beside* the other. *Cincinnati College* v. *Yeatman*, 607.

TIME. See SALE, 9.

TITLE. See JUDICIAL SALE, 1; MUNICIPAL CORPORATION, 13; SHERIFF, 3; VENDOR, 3.

TORT. See HUSBAND AND WIFE, 39, 40; INFANT, 2; MUNICIPAL CORPORATION, 12; SALE, 6; UNITED STATES, 2.

1. Torts arising from breach of contract discussed. *Note to Dickson* v. *Telegraph Co.*, 227.

2. Evidence in civil actions, *quasi* criminal, discussed. *Note to Kane* v. *Hibernia Ins. Co.*, 302.

TRADEMARK.

1. The use of party's own name cannot be enjoined, unless fraudulent. *Carmichel* v. *Latimer*, 144.

2. A manufacturer has a right to label his goods with his own name or that of his mill, if no fraudulent purpose is intended. *Id.*

3. A court of equity will never grant its protection to a trademark which expresses a falsehood as against one which expresses the truth. *Helmbold* v. *Helmbold Manufacturing Co.*, 169.

4. General words cannot be appropriated as trademarks; and when, therefore, a man uses them in connection with his own name, the latter simply identifies his goods and is the only distinctive feature of the trademark. *Id.*

5. In such a case the right to use his name is a personal right and does not pass to his assignee by an adjudication in bankruptcy. *Id.*

6. A trademark, consisting of a word and symbol, arbitrarily assumed, may be lost by non-use. *Blackwell* v. *Dibrell*, 516.

7. If an equivalent trademark is, without any knowledge of the first one, originated and devised by another person during the period of such disuse, for use at a particular place, or for a commodity of a particular region, that other person may thereby acquire a right of exclusive use in the second trademark, at such place, on such product, and may enjoin the general use of the first trademark. *Id.*

8. If the second trademark, during such period of disuse, acquires a peculiar geographical and commercial signification, so that the use of the original one, as an arbitrary device, would operate to deceive and defraud the public, a court of equity may enjoin against the use of the first trademark. *Id.*

TRESPASS. See HUSBAND AND WIFE, 41; OFFICER, 6; RIPARIAN RIGHTS, 2, 3.

TRIALS. See EVIDENCE, 11, 12; EXTRADITION; JURY, 1-2; VERDICT, 3.

1. Where a jury is waived, and issues of fact submitted to the court, with a request to have the conclusions of fact found separately from the conclusions of law, a question as to the sufficiency of the evidence upon which findings of fact were made can only be raised by a bill of exceptions. *Ralston* v. *Adm'r of Kohl*, 207.

2. It is error for a judge before whom a case is tried to leave the court-room whilst the cause is being argued before the jury. The argument of a cause is as much a part of the trial as hearing the evidence, and the parties are entitled to have the judge present. *Meredith* v. *The People*, 344.

3. Although there may be some evidence in favor of a party, yet if it is insufficient to sustain a verdict, the court is not bound to submit the case to the jury. *Herbert* v. *Butler*, 800.

TROVER.

1. A wagon belonging to E. was placed by him in the hands of B. for sale. Subsequently E. made an assignment for the benefit of creditors to H. Trover was after this brought for the wagon against B. by "E., trustee for H." *Held*, that the assignment gave title to H., and that the action was improperly brought in the name of E. *Meyers* v. *Briggs*, 207.

TROVER.

2. If the owner of an article of personal property delivers it to another to sell, the latter has no right to deliver it to his creditor in payment of his own pre-existing debt; and if he does so, the owner may maintain trover against the creditor without a previous demand. *Rodick* v. *Coburn*, 800. See AGENT, 5–7.

TRUST AND TRUSTEE. See CHARITY, 1; EXECUTOR, 4–6; FRAUD, 2; GIFT, 2.

1. The question how far one trustee will be held personally liable for the acts of his co-trustee, discussed. *Wilcox* v. *Bates*, 280.

2. Hostile feelings between trustee and *cestui que trust* are not cause for removal where the duties are merely formal and ministerial, and no neglect of duty or misconduct is established against the trustee. *McPherson* v. *Cox*, 544.

3. Where the *cestui que trust* of real estate has an absolute interest without any control in the trustee, the former may, as a general rule, alien his estate. Where the *cestui* has been in possession a long time, the court may direct a jury to presume a conveyance from the trustee to perfect the title, or may itself act upon the same presumption. *Read* v. *Power*, 561.

4. But where the legal title is in a trustee, though only for a naked trust to convey, a purchaser from the *cestui que trust* will not, in the absence of an express agreement to accept the equitable title only, be compelled, on a bill for specific performance, to accept the title from the *cestui* unless it is perfected by a conveyance of the legal estate from the trustee. *Id.*

5. One who gives a deed of trust upon land cannot afterwards make any agreement concerning the same to the prejudice of the title conveyed by the deed. *Sims* v. *Field*, 680.

6. A trustee cannot deny the title of his beneficiary. *Railroad Co.* v. *Durant*, 72.

TUG. See ADMIRALTY, 3, 9.

UNDUE INFLUENCE. See DEED, 8, 9; WILL, 7.

UNITED STATES. See CONFISCATION; FRAUD, 1; OFFICER, 1, 2.

1. The Act of Congress of June 2d 1862, requiring contracts for the government to be in writing, is mandatory. *Clark* v. *United States*, 344.

2. The government is not responsible for the laches or the wrongful acts of its officers. *Hart* v. *United States*, 344.

UNITED STATES COURTS. See ADMIRALTY, 8; CORPORATION, 8; COURTS, 5, 6; NATIONAL BANK, 4; PATENT, 6.

1. Section 1005 of the Revised Statutes authorizes the court to allow an amendment of a writ of error when the statement of the parties thereto is defective. The right to amend is in its discretion. *Pearson* v. *Yewdall*, 207.

2. To give the court jurisdiction, it is not sufficient to show that a federal question might have arisen, unless it is further shown, that it did arise and was applied by the state court to the case. *Hager* v. *People of California*, 207.

3. It is not necessary that the record of a judgment should be authenticated in the mode prescribed by the Act of Congress to render the same admissible in the courts of the United States: the District Court of the United States, even out of the state composing the district, is to be regarded as a domestic and not a foreign court. *Turnbull* v. *Payson*, 207. See LIS PENDENS, 1.

4. A judgment rendered in the Circuit Court of the United States has the same lien on the lands of the debtor within the district, that is given to a judgment of the state court within the limit of its territorial jurisdiction. *Lawrence* v. *Belger*, 480.

UNSOUND MIND. See INSANITY, 4.

USURY. See NATIONAL BANK, 3, 4.

1. If a new security includes sums for unpaid usurious items, it is to that extent without consideration and liable to abatement. *Gardner* v. *Matteson*, 680.

USURY.

2. In replevin against the mortgagee of chattels who has seized them for non-payment, the mortgagor may show that the notes secured by the mortgage are in part made up of usurious items. *Gardner* v. *Matteson*, 680.

VARIANCE. See AGENT, 10; ASSUMPSIT, 2.

VENDOR AND PURCHASER. See FRAUDS, STATUTE OF; JUDICIAL SALE; SALE; SURETY, 6, 7.

1. A person who, having discovered a flaw in a title to land, purchases the title for speculation, with a view to ousting the possessors, who claim to be the real owners, is not a *bona fide* purchaser. *Wanner* v. *Sisson*, 544.

2. Possession by a man or his tenant is notice of the title, equitable as well as legal, under which he claims the property. *Id.*

3. The kind or quality of title a purchaser is bound to accept from a vendor, discussed. *Note to Read* v. *Power*, 563.

4. A vendor may waive his lien by acts as well as by express stipulations. *Anderson* v. *Griffith*, 607.

VERDICT.

1. Where the verdict is deemed by the court excessive, it may impose upon the successful party the alternative of accepting a reduced amount, or of submitting to a new trial. *Noel* v. *Railroad Co.*, 72.

2. Special verdicts should be positive, direct and intelligible answers to single, direct and plain questions. *Carroll* v. *Bohan*, 414.

3. In an action *de bonis asportatis*, where defendant claiming under a chattel mortgage, sets up an equitable counter-claim for reformation of the mortgage so as to make it cover a certain part of the goods in dispute, it is imperative that the equitable issue be first tried; and the two issues should not be tried indiscriminately by a jury. *Id.*

4. To the question, whether the parties intended the mortgage to cover the mortgagor's entire stock of goods, the jury answered, as to the plaintiff, yes; as to the defendant, no. They also answered another question affirmatively upon a certain hypothesis, giving no answer to it upon any other hypothesis. *Held*, that the verdict was insufficient; and a judgment upon it was reversed for that reason. *Id.*

5. The affidavit of a juror cannot be used to impeach the verdict of a jury of which he was a member. *Lucas* v. *Cannon*, 608.

6. After the delivery of the verdict, the judge told the jurors that they were discharged; but immediately thereafter, before they had left their seats or communicated with any one, he called their attention to imperfections in the verdict, and put it into the form which the jurors affirmed they intended, and, as amended, it was signed by the foreman, and declared by the jury to be their verdict: *Held*, no error. *Sewing Machine Co.* v. *Heller*, 744.

7. The court will not permit a verdict to stand which appears to be the result of passion or prejudice. *McKinley* v. *Railroad Co.*, 69.

VESSEL. See ADMIRALTY; RIPARIAN RIGHTS, 1.

VOLUNTARY CONVEYANCE. See EQUITY, 15; HUSBAND AND WIFE, 15, 16.

THE SUBJECT AND CASES DISCUSSED, 1, 73.

VOTES AND VOTERS. See CONSTITUTIONAL LAW, 5; ELECTION.

WAGES. See SERVANT.

WAIVER. See PARTNERSHIP, 4; SALE, 5; VENDOR, 4.

WAREHOUSEMAN. See COMMON CARRIER, 8; NEGLIGENCE, 11, 12.

WARRANTY. See JUDICIAL SALE, 3; SALE, 10–16; SHERIFF, 3; SHIPPING, 1–2.

1. Subsequently-acquired lands pass under a grant with warranty. *Broadwell* v. *Phillips*, 608.

WASTE. See MINES, 3; TENANT FOR LIFE.

WATERS AND WATERCOURSES.

1. Land bordering on tide-water was platted into house-lots, some of which extended below low-water mark, all the lots being defined shoreward by a fixed line, outside of which no lots were platted. Conveyance of these lots was made, and subsequently a harbor line was fixed by the state, running in front of the lots. *Held*, on a trustee's bill for instructions: 1. That the fee of the soil below high-water mark was in the state; 2. That the establishment of a harbor line was permission given by the state to fill out to it; 3. That a grantee of a lot touching tide-water who fills out to the harbor line holds the filled land, not under his grantor, but directly from the state; 4. That the land between high-water mark and any lot not touching high-water mark, with the right to fill to the harbor line, did not pass by the conveyance made. *Bailey* v. *Burges*, 144.

2. In controversies between mill-owners as to the flow of water, a decree which attempts to fix definitely the lower proprietor's rights, unaffected by the corresponding rights of the upper, is erroneous. *Hoxsie* v. *Hoxsie*, 480.

3. In such controversies the process of injunction, being susceptible of abuse from the difficulty of laying down any precise rule, should seldom be resorted to. *Id.*

WAY.

Only a clear, practical necessity warrants the taking of private property for a private road. It is only justifiable where no other way of access to the applicant's land can be found. *People* v. *Richards*, 680.

WHARF. See ADMIRALTY, 5; RIPARIAN RIGHTS, 1.

WILL. See DEED, 8, 9; INSANITY, 3; LIMITATIONS, 10.

1. No presumption of an intent to die intestate as to any part of his property is allowable, when the words of a testator's will may fairly carry the whole. *Given* v. *Hilton*, 344.

2. An apparent general intent to make by his will a complete disposition of all a testator's estate cannot control particular directions plainly to the contrary. *Id.*

3. Such a general intent is of weight, however, in determining what was intended by particular devises or bequests that may admit of enlarged or limited constructions. *Id.*

4. When a will directs conversion of realty only for certain purposes which are limited, for example, for the payment of particular legacies, and follows the direction by a bequest of the residue of personal estate, the conversion takes place only so far as the proceeds of the sale are needed to pay the legacies prior to the residuary one, and the gift of the personalty will not carry the produce of the sale of the lands in the absence of a contrary intent plainly manifested. *Id.*

5. A general direction to sell and apply the proceeds indiscriminately to the payment of debts and legacies operates as a conversion out and out. *Id.*

6. A will is not necessarily void for the testator's intoxication. If the act which the testator does, is one which his intoxication does not prevent him from doing with comprehension, it cannot of itself avoid it. *Pierce* v. *Pierce*, 744.

7. The presumption of undue influence from the retention of a will uncancelled by a testator, is no more significant than such retention would be in case of intoxication. *Id.*

8. The question of the effect of intoxication upon the person's capacity is not a scientific question to be determined by experts, but one within common observation, depending on the facts of each case. *Id.*

9. Though the will of a testator may have been executed in one state, yet, if he die while domiciled in another, the law of the latter must be applied in determining whether such will has been duly executed. *Patterson* v. *Ransom*, 72.

10. The execution having been attested by but one witness, testator afterwards, at a different place, and in the absence of such witness, executed an endorsement upon the back of such will, reading, "The within is the basis on which I desire to have my affairs disposed of, should no other will be

WILL.
made by me," which endorsement was attested by another witness, to whom its contents had been made known, and the signatures to such will exhibited, by such testator : *Held*, that it had not been executed in the presence of two witnesses ; also, that it can not be established by parol evidence, that the signature of such witness, to such endorsement, was intended by the testator, and executed by such witness, as an attesting of such will. *Patterson* v. *Ransom*, 72.

11. The probate of a will was contested on two grounds : want of capacity and undue influence : *Held*, that the declarations of the deceased were competent to go to the jury on both issues. *Lucas* v. *Cannon*, 608.

12. A statute in force providing that "whenever any child shall be born after the execution of his father's or mother's will, without having any provision made for him in such will, he shall have a right and interest in the estate of his father or mother in like manner as if the father or mother had died intestate." A testator, by his will, gave a bequest of $2000 in trust, the income to be used for his daughter until twenty, or until married, then the trust fund to said daughter. In case, however, of her death under twenty or unmarried, the sum so held in trust, together with the accumulated interest thereon, was bequeathed in equal shares to her brothers and sisters then living. More than a year after the execution of the will a son was born to the testator, for whom no provision was made in the will except the above described contingency : *Held*, that the provision was not such as was contemplated by the statute, and that the son was entitled to share in his father's estate as in case of an intestacy. *Potter* v. *Brown*, 208.

WITNESS. See CRIMINAL LAW, 4, 5, 21, 22 ; EVIDENCE, 3, 17, 18.

1. At common law a party to a suit is a competent witness to prove the contents of a trunk or package, which by other testimony is shown to have been lost or destroyed under circumstances that render some one liable for the loss, and section 1079, Rev. Stat., was intended to do no more than to restore in the Court of Claims the common-law rule excluding parties as witnesses, which had been abolished by the Act of July 1st 1864 ; and, hence, claimant in this case was competent to prove the contents of a package of government money taken from his official safe by robbers. *United States* v. *Clark*, 608.

2. If the state summon a witness and refuse to introduce him on the trial, the court cannot compel his introduction, as the law officer of the state can make out his case by any testimony he sees fit to introduce. *Eason* v. *The State*, 313.

3. A witness, as such, cannot have an attorney ; and though an accomplice may act by advice of his attorney on the question whether he will become a witness for the prosecution, when he once becomes such a witness, the relation of attorney and client ceases. *Wight* v. *Rindskopf*, 272.

END OF VOL. XXVI.